

ATTACHMENT 6

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Bates, Gregory

April 16, 2014

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG
PRODUCTS ANTITRUST
LITIGATION

MDL NO. 2002
08-md-02002

THIS DOCUMENT RELATES TO
Publix Super Markets, Inc.
v. United Egg Producers, et
al., No. 2:10-cv-06737 GP

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Wednesday, April 16, 2014
8:30 a.m.

Videotaped deposition of GREGORY BATES,
convened at Wasilewski Court Reporting, 1525 South
Florida Avenue, Suite 4, Lakeland, Florida 33803,
pursuant to notice, the proceedings being recorded
stenographically by Joan L. Pitt, Registered Merit
Reporter, Certified Realtime Reporter, Florida
Professional Reporter, and Notary Public of the State of
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<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 On behalf of the Plaintiff Publix Super Markets, Inc.,</p> <p>4 and Gregory Bates:</p> <p>5 DAVID P. GERMAINE, ESQUIRE</p> <p>6 Vanek, Vickers & Masini, P.C.</p> <p>7 55 West Monroe Street, Suite 1500</p> <p>8 Chicago, Illinois 60603</p> <p>9 312.224.1505</p> <p>10 dgermaine@vaneklaw.com</p> <p>11</p> <p>12 On behalf of the Indirect Purchaser Plaintiffs:</p> <p>13</p> <p>14 MERRICK SCOTT RAYLE, ESQUIRE</p> <p>15 Lovell Stewart Halebian Jacobson, LLP</p> <p>16 61 Broadway, Suite 501</p> <p>17 New York, New York 10006</p> <p>18 415.533.5316</p> <p>19 msrayle@sbcglobal.net</p> <p>20 On behalf of the Defendant/Counterclaim-Plaintiff</p> <p>21 Cal-Maine Foods, Inc.:</p> <p>22</p> <p>23 OLIVIA A. ADENDORFF, ESQUIRE</p> <p>24 Gibson, Dunn & Crutcher, LLP</p> <p>25 2100 McKinney Avenue</p> <p> Dallas, Texas 75201-6912</p> <p> 214.698.3100</p> <p> oadendorff@gibsondunn.com</p> <p> On behalf of the Defendant Rose Acre Farms:</p> <p> MOLLY CRABTREE, ESQUIRE (Via telephone)</p> <p> Porter, Wright, Morris & Arthur, LLP</p> <p> 1919 Pennsylvania Northwest, Suite 500</p> <p> Washington, DC 20006-3434</p> <p> 202.778.3050</p> <p> mcrabtree@porterwright.com</p> <p> ALSO PRESENT: GARY MARKMAN, Videographer</p>	<p>1 BATES EXHIBIT 11 PUBLIX SUPER MARKETS, INC., 131</p> <p>2 QUALIFYING QUESTIONNAIRE PUBLIX</p> <p>3 BRAND EGGS PUB_EGGS_006960</p> <p>4 through 006963</p> <p>5</p> <p>6 BATES EXHIBIT 12 AUTHORIZATION FOR PROMOTIONAL 147</p> <p>7 CARTONS PUB_EGGS_012876</p> <p>8 through 012868</p> <p>9</p> <p>10 BATES EXHIBIT 13 SLIDE 150</p> <p>11 PUB_EGGS_012295</p> <p>12 BATES EXHIBIT 14 PUBLIX ANIMAL WELFARE STATEMENT 156</p> <p>13 PUB_EGGS_020727</p> <p>14</p> <p>15 BATES EXHIBIT 15 JUNE 2002 REPORT FMI-NCCR 161</p> <p>16 ANIMAL WELFARE PROGRAM</p> <p>17 FMI-000015 through 000022</p> <p>18</p> <p>19 BATES EXHIBIT 16 LETTER DATED JULY 22, 2002 168</p> <p>20 PUB_EGGS_011761 through 011762</p> <p>21 BATES EXHIBIT 17 PRODUCT SPECIFICATIONS FOR 173</p> <p>22 PUBLIX EGGS PUB_EGGS_007151</p> <p>23 through 007157</p> <p>24 BATES EXHIBIT 18 LETTER DATED MAY 30, 2002 178</p> <p>25 PUB_EGGS_011782 through 011785</p> <p> BATES EXHIBIT 19 MEETING WITH BESSIE FOSTER 183</p> <p> ITEMS FOR DISCUSSION WEDNESDAY,</p> <p> JANUARY 29, 2003</p> <p> PUB_EGGS_012413</p> <p> BATES EXHIBIT 20 FORMULA FOR PRICING 184</p> <p> PUB_EGGS_012953</p> <p> BATES EXHIBIT 21 PRICE SHEET 186</p> <p> PUB_EGGS_019635</p> <p> BATES EXHIBIT 22 E-MAIL DATED FEBRUARY 5, 2007 187</p> <p> PUB_EGGS_015466</p> <p> BATES EXHIBIT 23 MEMO DATED OCTOBER 23, 2007 190</p> <p> PUB_EGGS_015153 through 015154</p> <p> BATES EXHIBIT 24 ARTICLE IN PROGRESSIVE GROCER 194</p> <p> MAGAZINE DATED JANUARY 1, 2002</p> <p> PUB_EGGS_006505 through 006507</p>
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<p style="text-align: right;">6</p> <p style="text-align: center;">PROCEEDINGS (8:30 a.m.)</p> <p>THE VIDEOGRAPHER: We are now on the record. Today's date is Wednesday, April 16th, 2014. The time is 8:30 a.m.</p> <p>This deposition is being taken at 1525 South Florida Avenue, Lakeland, Florida 33803.</p> <p>This is the matter of Processed Egg Products Antitrust Litigation, Case No. 08-md-02002, in the United States District Court for the Eastern District of Pennsylvania.</p> <p>The deponent is Greg Bates.</p> <p>Will all attorneys please voice identify themselves.</p> <p>MS. ADENDORFF: Olivia Adendorff for Defendant and Counterclaim-Plaintiff Cal-Maine Foods, from Gibson, Dunn & Crutcher.</p> <p>MR. GERMAINE: David Germaine on behalf of the witness and Publix Super Markets.</p> <p>MR. RAYLE: Merrill Scott Rayle on behalf of the Indirect Purchaser Class, Lovell Stewart Halebian Jacobson, LLP.</p> <p>THE VIDEOGRAPHER: Will the court reporter please swear in the witness.</p> <p>THE COURT REPORTER: Raise your right hand,</p>	<p style="text-align: right;">8</p> <p>A. Yes.</p> <p>Q. And as you've probably noticed, we have a court reporter here today, so she's trying to take down everything that we say. Because of that, it's important that you wait until I'm entirely done with my questions before giving your answer, and I will also try to wait until you are totally done answering before I ask my next question. Does that make sense?</p> <p>A. Yes.</p> <p>Q. It's also important that you give verbal responses today, so don't nod your head or say uh-huh, but try to say yes or no so that the court reporter can have a clear record. Does that make sense?</p> <p>A. Yes.</p> <p>Q. And are you currently taking any medication that would interfere with your ability to testify today?</p> <p>A. No.</p> <p>Q. Do you know of any other reason why you cannot testify truthfully or fully this morning?</p> <p>A. No.</p> <p>Q. All right. Before the deposition, I asked your counsel to give you this Acknowledgement and Consent, which we will mark as Exhibit 1.</p> <p>(Bates Exhibit 1 was marked for identification.)</p>
<p style="text-align: right;">7</p> <p>please. Do you swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth?</p> <p>THE WITNESS: I do.</p> <p>THE COURT REPORTER: Thank you.</p> <p>GREGORY BATES, called as a witness by the Defendant/Counter-Plaintiff Cal-Maine Foods, Inc., having been first duly sworn, testified as follows:</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>BY MS. ADENDORFF:</p> <p>Q. Can you please state your full name for the record?</p> <p>A. Gregory Allen Bates.</p> <p>Q. And, Mr. Bates, have you ever been deposed before?</p> <p>A. No.</p> <p>Q. We're going to go over some ground rules to start. First of all, you understand that while we're on the record today you're testifying under the oath that you just gave; correct?</p> <p>A. Yes.</p> <p>Q. And your testimony here can be used in a courtroom, so therefore, even though there's no judge and jury here, you should give testimony as if a judge or jury was present. Does that make sense?</p>	<p style="text-align: right;">9</p> <p>Do you recognize this document?</p> <p>A. Yes.</p> <p>Q. Did you sign this document?</p> <p>A. Yes, I did.</p> <p>Q. And do you understand that in signing this document any confidential documents that you see from other parties today during the deposition you should keep confidential and not discuss outside of this deposition?</p> <p>A. Yes.</p> <p>Q. Did you take any steps to prepare for this deposition this morning?</p> <p>A. Yes.</p> <p>Q. What did you do to prepare?</p> <p>A. I met with David yesterday for a couple hours.</p> <p>Q. And did you review any documents in preparation for this deposition?</p> <p>A. No, we did not.</p> <p>Q. And other than yesterday meeting with David, did you do anything else to prepare for this deposition?</p> <p>A. No.</p> <p>Q. Have you discussed this deposition with anyone?</p> <p>A. I spoke with Jimmy Wilson. Not really about my deposition. He -- he told me that he was being deposed again also.</p>

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<p style="text-align: right;">10</p> <p>1 Q. And when was that?</p> <p>2 A. Two days ago.</p> <p>3 Q. And in speaking with Mr. Wilson, did anything</p> <p>4 he said refresh your recollection about topics that you</p> <p>5 believed would come up during the deposition today?</p> <p>6 A. No.</p> <p>7 (Bates Exhibit 2 was marked for</p> <p>8 identification.)</p> <p>9 Q. You have in front of you what's been marked as</p> <p>10 Exhibit 2. Do you recognize this document?</p> <p>11 A. No, I do not.</p> <p>12 Q. I represent to you that this document was sent</p> <p>13 to your counsel and it is under this document that you</p> <p>14 are here this morning to be deposed.</p> <p>15 Do you understand that you are here to be</p> <p>16 deposed in connection with In Re: Processed Egg</p> <p>17 Products Antitrust Litigation?</p> <p>18 A. Yes.</p> <p>19 Q. And you understand that Publix is a plaintiff</p> <p>20 in that lawsuit?</p> <p>21 A. Yes.</p> <p>22 Q. What is your current home address?</p> <p>23 A. 2101 Emerald Ridge Drive, Lakeland, Florida.</p> <p>24 Q. And how long have you lived there?</p> <p>25 A. Ten years.</p>	<p style="text-align: right;">12</p> <p>1 A. I can't remember. It's a -- it has to do with</p> <p>2 food safety. Like operational stuff, like to do with</p> <p>3 retail stores and restaurants. Temperatures you hold</p> <p>4 food at and sanitation procedures. I just can't</p> <p>5 remember the name of the --</p> <p>6 Q. And approximately when did you receive that</p> <p>7 certification?</p> <p>8 A. Five years ago.</p> <p>9 Q. And what did you do in order to receive that</p> <p>10 certification? Were there classes?</p> <p>11 A. There was a class and a test.</p> <p>12 Q. And for how long was that class? Was it a</p> <p>13 week?</p> <p>14 A. A one-day class.</p> <p>15 Q. A one-day. And you said that it mainly</p> <p>16 involves procedures on how to keep food safe in a retail</p> <p>17 environment; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Are you currently employed?</p> <p>20 A. Yes.</p> <p>21 Q. Who is your employer?</p> <p>22 A. Publix Super Markets.</p> <p>23 Q. When did you join Publix?</p> <p>24 A. Thirty-one years ago.</p> <p>25 Q. And what year would that have been 31 years</p>
<p style="text-align: right;">11</p> <p>1 Q. And where did you live before that?</p> <p>2 A. On the north side of Lakeland.</p> <p>3 Q. And what was your address there?</p> <p>4 A. 1429 Timber Ridge Loop.</p> <p>5 Q. When did you move to Lakeland?</p> <p>6 A. I didn't move to Lakeland.</p> <p>7 Q. You've lived here your whole life?</p> <p>8 A. Yes.</p> <p>9 Q. Did you attend college?</p> <p>10 A. I did.</p> <p>11 Q. Where did you attend?</p> <p>12 A. Florida Southern College.</p> <p>13 Q. And did you graduate from college?</p> <p>14 A. Yes.</p> <p>15 Q. What was your degree?</p> <p>16 A. Accounting.</p> <p>17 Q. Did you have -- what year did you graduate from</p> <p>18 college?</p> <p>19 A. '86.</p> <p>20 Q. And did you have any postgraduate education?</p> <p>21 A. No.</p> <p>22 Q. Do you have any other degrees or</p> <p>23 certifications?</p> <p>24 A. Food safety certifications. That was a class.</p> <p>25 Q. What -- what kind of food safety certification?</p>	<p style="text-align: right;">13</p> <p>1 ago? 1983?</p> <p>2 A. Yes.</p> <p>3 Q. And where did you work before you joined</p> <p>4 Publix?</p> <p>5 A. I had a part-time job at a metal fabricating</p> <p>6 shop.</p> <p>7 Q. And would that have been when you were still in</p> <p>8 high school?</p> <p>9 A. No, when I was in college.</p> <p>10 Q. And when you first joined Publix, why did you</p> <p>11 join Publix?</p> <p>12 A. I needed a job.</p> <p>13 Q. And what was your first job at Publix?</p> <p>14 Position.</p> <p>15 A. I worked part-time in the housewares warehouse.</p> <p>16 Q. What did you do in the housewares warehouse?</p> <p>17 A. A lot of things. From -- from taking</p> <p>18 inventory, making inventory adjustments, to stocking and</p> <p>19 flow rack, and cleanup work.</p> <p>20 Q. And how long did you hold that position?</p> <p>21 A. A year.</p> <p>22 Q. What was your next position at Publix?</p> <p>23 A. Full-time in the frozen food warehouse.</p> <p>24 Q. And was that a similar job in terms of doing</p> <p>25 inventory, stocking?</p>

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<p style="text-align: right;">14</p> <p>1 A. Selector.</p> <p>2 Q. Selector. What does that position entail?</p> <p>3 A. Filling orders for stores. You select cases</p> <p>4 for store orders. Load them on the truck.</p> <p>5 Q. So that warehouse would serve a group of</p> <p>6 stores?</p> <p>7 A. Uh-huh.</p> <p>8 Q. How many stores is that warehouse,</p> <p>9 approximately? In Florida only or --</p> <p>10 A. Yes.</p> <p>11 Q. How long did you hold that position?</p> <p>12 A. Three to four years.</p> <p>13 Q. So at that point you would have graduated from</p> <p>14 college?</p> <p>15 A. Yes.</p> <p>16 Q. What was your next position after frozen food</p> <p>17 warehouse?</p> <p>18 A. I got a job as supervisor in the produce</p> <p>19 warehouse over a shipping crew.</p> <p>20 Q. Supervisor over the shipping crew?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And in that job, can you give me a little</p> <p>23 description about what that entailed?</p> <p>24 A. Manage the selectors, the loading of the</p> <p>25 trucks.</p>	<p style="text-align: right;">16</p> <p>1 trays, operate the machines. Just a different</p> <p>2 operation, but I supervised that operation also for a</p> <p>3 couple years. I can't remember the exact timing on</p> <p>4 this, but this is kind of the flow of the jobs.</p> <p>5 From there, I went to grocery warehouse back to</p> <p>6 a shipping supervisor. Same type of job. Different</p> <p>7 warehouse. Different products.</p> <p>8 And from there I went back to produce on a day</p> <p>9 shift job, which is back to fresh pack. Same operation</p> <p>10 as before. I had done it --</p> <p>11 Q. Hold on one second. Say that again. So after</p> <p>12 grocery warehouse shipping supervisor, what was the next</p> <p>13 one?</p> <p>14 A. Went back to produce for a fresh pack job.</p> <p>15 Same job. Different shift. It was a day shift job.</p> <p>16 Q. Again supervisor?</p> <p>17 A. Yeah.</p> <p>18 Q. And all of these warehouses, were they each</p> <p>19 separate warehouses; produce, grocery, and fresh pack?</p> <p>20 A. Produce and fresh pack were the same warehouse.</p> <p>21 Q. Okay.</p> <p>22 A. Grocery was separate.</p> <p>23 Q. But they're all here in Lakeland?</p> <p>24 A. Yes, all in the same complex.</p> <p>25 Q. Okay. And after moving back to fresh pack</p>
<p style="text-align: right;">15</p> <p>1 Q. And what are selectors?</p> <p>2 A. They -- they actually fill the orders. You</p> <p>3 have a store order that's on a document, and they go</p> <p>4 through the warehouse and pick each case, stack it on a</p> <p>5 pallet with a -- you have pallet jacks and they load it.</p> <p>6 They move up and down the aisles of the warehouse and</p> <p>7 fill it, working the order, and load it on the trucks.</p> <p>8 Q. So you supervised the selectors. What else did</p> <p>9 you do as supervisor of the shipping crew?</p> <p>10 A. There's paperwork that goes along with that.</p> <p>11 Evaluations.</p> <p>12 Q. And how many people did you supervise,</p> <p>13 approximately?</p> <p>14 A. Thirty.</p> <p>15 Q. And what was your next position at Publix? I</p> <p>16 guess I should ask -- sorry -- how long you were in the</p> <p>17 shipping crew position.</p> <p>18 A. I went from that same job, a lateral move, over</p> <p>19 to the -- I was in the fresh pack. I went into the</p> <p>20 fresh pack operation in produce. Supervisor. Still pay</p> <p>21 level job, but a little different work. They pack --</p> <p>22 they pack the produce. Okay? You know, you've got</p> <p>23 trays of whatever, grapes, tomatoes, that's overwrapped.</p> <p>24 We have machines that do that work. We have people who</p> <p>25 work on a line. They grade the produce, pack it in the</p>	<p style="text-align: right;">17</p> <p>1 produce -- approximately what year was that, do you</p> <p>2 know, that you moved back to fresh pack produce?</p> <p>3 A. It would be in the '90s somewhere. I just</p> <p>4 can't remember.</p> <p>5 Q. And you were day shift supervisor. How long</p> <p>6 were you day shift supervisor?</p> <p>7 A. I don't know. I just can't remember.</p> <p>8 Q. A couple years?</p> <p>9 A. (Nodding head.)</p> <p>10 Q. And what was your next position after that?</p> <p>11 A. I was selected to be private label analyst in</p> <p>12 the purchasing department.</p> <p>13 Q. What does that mean?</p> <p>14 A. I worked on helping the buying department, or</p> <p>15 teams, select suppliers to make our private label items,</p> <p>16 Publix branded.</p> <p>17 Q. And when did you start that position?</p> <p>18 A. I should have brought my work history with me.</p> <p>19 I can't remember the specific year. It was -- let's</p> <p>20 see. I started in '83. Still in the '90s, because I</p> <p>21 think I worked that job for about two years, and then I</p> <p>22 became inventory manager, and that had to be somewhere</p> <p>23 around '98, '99.</p> <p>24 Q. So you ended the private label analyst position</p> <p>25 in '98 or '99?</p>

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<p style="text-align: right;">18</p> <p>1 A. Uh-huh, somewhere around there.</p> <p>2 Q. And in private label, what products did you</p> <p>3 work on?</p> <p>4 A. A lot of nonfood products, like bath tissue,</p> <p>5 pet food.</p> <p>6 Q. Did you say nonfood or nonfruit?</p> <p>7 A. Nonfood. Sorry. The only food item I remember</p> <p>8 is coffee. I worked on that.</p> <p>9 Q. And that seems like a big job, so do they</p> <p>10 divide up the products? Did you have a certain category</p> <p>11 of products that you were in charge of?</p> <p>12 A. There were two of us that did that job, and we</p> <p>13 kind of split it. That's why I had most of the nonfood</p> <p>14 items and another analyst had the food items. So across</p> <p>15 all of grocery, which is defined by center store types</p> <p>16 of products.</p> <p>17 Q. And in that job, did you only select -- were</p> <p>18 you only involved in selecting the supplier and then the</p> <p>19 rest of the relationship was managed by someone else?</p> <p>20 A. Yes. Once we made the selection, it was</p> <p>21 managed by the buying team.</p> <p>22 Q. And was that part of the manufacturing MSP</p> <p>23 department?</p> <p>24 A. That is what the MSP department does today.</p> <p>25 Q. Was that in MSP at the time?</p>	<p style="text-align: right;">20</p> <p>1 A. Send a questionnaire.</p> <p>2 Q. And who drafted the questionnaire?</p> <p>3 A. I had a questionnaire already made for us that</p> <p>4 was developed in the -- when we started that work, which</p> <p>5 came from MSP, because they were doing that work already</p> <p>6 with manufacturing suppliers. So I did -- so we -- we</p> <p>7 tailored it, put some questions that might be relevant</p> <p>8 to the suppliers we were -- were going after. So it's</p> <p>9 kind of a basic questionnaire, but there may be some</p> <p>10 questions that were different for the type of suppliers</p> <p>11 we were going after that might be relevant.</p> <p>12 Q. Would you say the majority of the questionnaire</p> <p>13 were fixed questions?</p> <p>14 A. Yes.</p> <p>15 Q. That applied to all suppliers?</p> <p>16 A. The majority of it would be, yes.</p> <p>17 Q. Can you give me an example of some of those</p> <p>18 kinds of questions?</p> <p>19 A. How many facilities do you have? What's the</p> <p>20 capacity? Where are those facilities located? Are you</p> <p>21 a public company or a private company? We would ask for</p> <p>22 financial information.</p> <p>23 Q. And what were some of the specific questions?</p> <p>24 Let's just take coffee, for example, or one that you</p> <p>25 particularly remember. Give me an example of some</p>
<p style="text-align: right;">19</p> <p>1 A. No. My job as an -- as that private label</p> <p>2 analyst, I don't know, a year or so after I left that</p> <p>3 job they took that work and moved it into the MSP</p> <p>4 department.</p> <p>5 Q. So when you were in that position, did you</p> <p>6 work -- walk me through how you would choose each</p> <p>7 supplier. So somebody would come to you and say, "We</p> <p>8 need a new supplier for our Publix brand bath tissue."</p> <p>9 Correct?</p> <p>10 A. (Nodding head.)</p> <p>11 Q. Then what would be your next step? Would you</p> <p>12 talk to someone in another department that specifically</p> <p>13 focused on bath tissue, or were you on your own?</p> <p>14 A. We would. We would talk to the buyers and get</p> <p>15 information. There was a resource for the suppliers in</p> <p>16 the industry. Then we would research supplier lists to</p> <p>17 find out any other suppliers that were out there.</p> <p>18 Q. And how did you research supplier lists?</p> <p>19 A. That's been a long time ago. I don't really</p> <p>20 remember the tools we used.</p> <p>21 Q. Would you consult books or sources of that</p> <p>22 nature?</p> <p>23 A. Yes. We didn't have the Internet.</p> <p>24 Q. So after selecting a list of suppliers, what</p> <p>25 was the next step in your responsibility?</p>	<p style="text-align: right;">21</p> <p>1 specific product questions you might ask.</p> <p>2 A. I'm not really remembering. I don't remember</p> <p>3 any specific questions, because the main purpose of that</p> <p>4 was more in general information, but I know there was,</p> <p>5 but I can't remember.</p> <p>6 Q. For the specific questions, who drafted those</p> <p>7 questions? Did you draft them, or did you turn those</p> <p>8 over to someone else to handle that was more familiar</p> <p>9 with the product?</p> <p>10 A. I would talk to the category team to see what</p> <p>11 may be different and draft a question with them with</p> <p>12 their help.</p> <p>13 Q. And I know you said you didn't deal much with</p> <p>14 food, but would some of your questions relate to safety</p> <p>15 or those kinds of issues specific to a product?</p> <p>16 A. Right, I didn't deal with the food, so then on</p> <p>17 the nonfood items the questions were more around quality</p> <p>18 control and their measures there, which --</p> <p>19 Q. So after you drafted this questionnaire, you</p> <p>20 would send it out to the list of suppliers; correct?</p> <p>21 A. (Nodding head.)</p> <p>22 Q. And then presumably get responses; correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. And then how would you ask for bids for price?</p> <p>25 A. Send them a spreadsheet.</p>

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<p style="text-align: right;">22</p> <p>1 Q. And what kind of spreadsheet?</p> <p>2 A. It was Lotus back then. They would just</p> <p>3 fill -- they would -- we would ask them for delivered</p> <p>4 pricing.</p> <p>5 Q. And when you say "delivered pricing", what do</p> <p>6 you mean?</p> <p>7 A. It means delivered to -- it includes</p> <p>8 transportation, is what that means.</p> <p>9 Q. So the price would include the transportation</p> <p>10 cost?</p> <p>11 A. Yeah.</p> <p>12 Q. And on those -- in those spreadsheets, would</p> <p>13 price be broken down into different components, so a</p> <p>14 transportation cost be a separate line item?</p> <p>15 A. No.</p> <p>16 Q. It would just be one number?</p> <p>17 A. Uh-huh.</p> <p>18 Q. So if it was one number, why did you need a</p> <p>19 spreadsheet instead of just saying, "What's your</p> <p>20 price?", answer, "This is our price."?</p> <p>21 Was it because you were asking for multiple</p> <p>22 products from one supplier?</p> <p>23 A. Oh, yeah, that's always the case. Well, I say</p> <p>24 always. More often than not, it was multiple items that</p> <p>25 a supplier would --</p>	<p style="text-align: right;">24</p> <p>1 why it depends.</p> <p>2 Q. And what were some very high volume products</p> <p>3 that you dealt with in private label?</p> <p>4 A. Paper products were high volume. Let me think.</p> <p>5 That was probably the only one in my term as analyst</p> <p>6 that was -- would really be considered the highest</p> <p>7 volume. Most of the other items in nonfood were not --</p> <p>8 wouldn't consider as being that high, high volume than</p> <p>9 other stuff.</p> <p>10 Q. For the price of all these different products</p> <p>11 that you handled, were there different pricing</p> <p>12 structures or different ways that the suppliers set the</p> <p>13 price for different products?</p> <p>14 A. Yes. Two basic ways. One is just to quote a</p> <p>15 price, which we -- and the other way would be a formula</p> <p>16 price.</p> <p>17 Q. So if a supplier simply quoted a price, that</p> <p>18 would be the fixed price of that good until the supplier</p> <p>19 notified you otherwise; correct?</p> <p>20 A. We asked for that price to be good for a year,</p> <p>21 but that was -- that's a point of negotiation also. It</p> <p>22 could be longer.</p> <p>23 But to answer your question, outside of that</p> <p>24 parameter, yes, so once you cross that line and they</p> <p>25 guaranteed a year or whatever the time period is, it</p>
<p style="text-align: right;">23</p> <p>1 Q. So, for example --</p> <p>2 A. -- bid on.</p> <p>3 Q. -- with bath tissue, it might be a 12-pack and</p> <p>4 a 24-pack or something along those lines?</p> <p>5 A. Exactly.</p> <p>6 Q. And does Publix try to reduce the number of</p> <p>7 products for a private label product? In other words,</p> <p>8 is it trying to get one supplier to provide as many</p> <p>9 different products as possible to all its stores?</p> <p>10 MR. GERMAINE: Objection to form. You can</p> <p>11 answer if you understand the question.</p> <p>12 Q. You can answer.</p> <p>13 A. It depends.</p> <p>14 Q. It depends on what?</p> <p>15 A. It depends on the situation with the type of</p> <p>16 product. And generally, yes, it's an advantage to get</p> <p>17 one supplier to give you more, because you have</p> <p>18 economies of scale. You have higher volume. You can</p> <p>19 get a lower price.</p> <p>20 However, there could be instances where the</p> <p>21 volume is so high and so great that you put yourself at</p> <p>22 a business risk of having just one supplier, and you may</p> <p>23 want the supply to be split so that you're not at risk,</p> <p>24 if something happens to that one source of supply, that</p> <p>25 you're not out of product for the whole company. That's</p>	<p style="text-align: right;">25</p> <p>1 would be whenever they notified us and had to justify a</p> <p>2 price increase.</p> <p>3 Q. And at the end of that year, or if they</p> <p>4 notified you at some different point that the price</p> <p>5 would increase, would they notify you as the private</p> <p>6 label analyst, or would they notify someone else?</p> <p>7 A. They'd notify the category, the buyer.</p> <p>8 Q. And the second method of pricing that you</p> <p>9 mentioned was pricing by formula. Can you explain that</p> <p>10 a little more?</p> <p>11 A. Basically, it is a pricing structure that's</p> <p>12 based off a couple key components that affect price for</p> <p>13 the goods of whatever it is.</p> <p>14 Q. So would those key components be off of some</p> <p>15 market price or list price or --</p> <p>16 A. Commodity pricing would be a big one that would</p> <p>17 drive. Like in plastic bags, it might be the cost of</p> <p>18 resin. If you're doing something -- I guess a food</p> <p>19 product might go off the price of grain or something</p> <p>20 like that.</p> <p>21 I didn't -- I did not deal with many</p> <p>22 formula-based pricing in what I did, but there were</p> <p>23 other -- it was more on the food side.</p> <p>24 Q. And for formula -- formula-based pricing, does</p> <p>25 that mean that the price would change every order, or it</p>

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<p style="text-align: right;">26</p> <p>1 could change every order if that metric was changing?</p> <p>2 A. Yes.</p> <p>3 Q. And when you were in that role, private label</p> <p>4 purchasing analyst, did you have anything to do with</p> <p>5 actually placing orders?</p> <p>6 A. No.</p> <p>7 Q. So once you sent out these questionnaires and</p> <p>8 received the answers and then sent out the spreadsheet</p> <p>9 requesting bids for price, what was the next step in the</p> <p>10 process of selecting a supplier?</p> <p>11 A. We would sometimes visit facilities of</p> <p>12 the -- the finalists, but not always.</p> <p>13 Q. When did you find it necessary to visit</p> <p>14 facilities?</p> <p>15 A. In the beginning of the process, we did it</p> <p>16 every time, but then as that work grew we -- we realized</p> <p>17 that we could rely on audits from outside firms to</p> <p>18 satisfy that need, so they would -- and that's really by</p> <p>19 judging the quality control measures and stuff in the</p> <p>20 facilities. So that was the reason for the visits</p> <p>21 mainly.</p> <p>22 So then the next step --</p> <p>23 Q. Did you attend the facilities visits when they</p> <p>24 occurred?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">28</p> <p>1 MS. ADENDORFF: Hi, Molly.</p> <p>2 BY MS. ADENDORFF:</p> <p>3 Q. So after visiting these facilities, what was</p> <p>4 the next step in the process of determining who the</p> <p>5 supplier would be?</p> <p>6 A. We would -- we would cut product. We may have</p> <p>7 done that before the visits, actually. I probably</p> <p>8 missed in remembering in the process. We did both, so</p> <p>9 all factors of information, so the finalists, we would</p> <p>10 test the product.</p> <p>11 So if it's nonfood product, we would send it to</p> <p>12 an outside lab, and the CQA person did that part of</p> <p>13 the -- the testing. So they would test the product,</p> <p>14 make sure it was -- met standards.</p> <p>15 Q. The inside CQA person would do it if it was a</p> <p>16 food product, is that what I understand?</p> <p>17 You said nonfood products would go to an</p> <p>18 outside lab; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So would a food -- food products stay in-house?</p> <p>21 A. I didn't do the food products, so I can't</p> <p>22 remember what -- what they were doing then.</p> <p>23 Q. So this was your first job in purchasing or</p> <p>24 procurement?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">27</p> <p>1 Q. And would you go with anyone else, or would you</p> <p>2 be the sole Publix representative?</p> <p>3 A. We would take a person from CQA, corporate</p> <p>4 quality assurance.</p> <p>5 Q. And what would that person's job function be?</p> <p>6 A. Their function is to manage the quality of</p> <p>7 private label products we have.</p> <p>8 Q. And if you know, in that group, in corporate</p> <p>9 quality assurance, are people assigned particular</p> <p>10 product groups, or is there one person per product, or</p> <p>11 how is it divided in that group, in terms of, are there</p> <p>12 specialists in particular kinds of products?</p> <p>13 A. They have a large group of products, so they</p> <p>14 have a person over all the grocery type of products, but</p> <p>15 it's -- the work is split maybe a little differently</p> <p>16 because there would be a person that's more expert in</p> <p>17 the labeling, too. So there's a person for all the</p> <p>18 grocery products, there's a person for all the fresh</p> <p>19 department products, there's a person over the store</p> <p>20 procedures, which is not really a product, but it's --</p> <p>21 is my general understanding of how the work is split.</p> <p>22 MR. RAYLE: Excuse me. Did somebody just join?</p> <p>23 MS. ADENDORFF: Yeah, did someone join on the</p> <p>24 phone?</p> <p>25 MS. CRABTREE: Molly Crabtree just joined.</p>	<p style="text-align: right;">29</p> <p>1 Q. Who trained you when you began that position?</p> <p>2 A. A consultant.</p> <p>3 Q. An outside consultant?</p> <p>4 A. Yes.</p> <p>5 Q. And what was the focus of that training?</p> <p>6 A. Teach me the procedures and process.</p> <p>7 Q. Were you trained on these different pricing</p> <p>8 models and those sorts of issues?</p> <p>9 A. Yes.</p> <p>10 Q. So going back to the step of evaluating the</p> <p>11 suppliers, after facilities visits and testing the</p> <p>12 product, what was the next step?</p> <p>13 A. We would select the supplier with the -- the</p> <p>14 whole team.</p> <p>15 Q. Can you identify for me who would be on those</p> <p>16 teams?</p> <p>17 A. It would be the buying group, which would be</p> <p>18 the category manager, the buyer, MSP person, which then</p> <p>19 was me. They didn't call it MSP yet.</p> <p>20 Q. You were the MSP person, as you're calling it?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay.</p> <p>23 A. And the person from CQA.</p> <p>24 Q. So four people?</p> <p>25 A. The director may also be on the team.</p>

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<p style="text-align: right;">30</p> <p>1 Q. And who's the director?</p> <p>2 A. The boss of the category manager.</p> <p>3 Q. And what's the full title? Director --</p> <p>4 A. Business development director.</p> <p>5 Q. And how would you go about actually making the</p> <p>6 decision? Would there be an in-person meeting?</p> <p>7 A. Yes.</p> <p>8 Q. And how long would those meetings usually last,</p> <p>9 or would there be several?</p> <p>10 A. Depends on how complex the decision was or</p> <p>11 difficult. The meeting can be 30 minutes. It can be an</p> <p>12 hour, hour and a half. Just depends.</p> <p>13 Q. Not typically longer than a day?</p> <p>14 MR. GERMAINE: Objection to form.</p> <p>15 Q. You can answer.</p> <p>16 A. There could be more than one meeting.</p> <p>17 Q. And how long would this whole process take from</p> <p>18 when you first knew that you needed to select a supplier</p> <p>19 to when you actually made the decision?</p> <p>20 A. I don't remember a specific timeline. It would</p> <p>21 be months, though. It's not a short thing.</p> <p>22 Q. So you started this position, I think you said,</p> <p>23 around 1998; correct? How long were you in that</p> <p>24 position?</p> <p>25 A. Somewhere around two years.</p>	<p style="text-align: right;">32</p> <p>1 Q. And how many Publix stores are there,</p> <p>2 approximately, do you know?</p> <p>3 MR. GERMAINE: Objection.</p> <p>4 Q. You can answer.</p> <p>5 A. We open new stores all the time. I'm not sure</p> <p>6 what the exact number is today.</p> <p>7 Q. Is it more than 100?</p> <p>8 A. Yes.</p> <p>9 Q. Is it more than 1,000?</p> <p>10 A. Yes.</p> <p>11 Q. And was it more than 100 when you started at</p> <p>12 Publix in the '80s?</p> <p>13 A. Yes.</p> <p>14 Q. And are Publix stores -- strike that.</p> <p>15 So when you worked as inventory manager, you</p> <p>16 ordered paper and pet food for all of the different</p> <p>17 Publix stores; correct?</p> <p>18 A. Ordered product for the warehouse. The</p> <p>19 warehouse sent it to all the stores.</p> <p>20 Q. So you didn't necessarily know which store</p> <p>21 needed how much paper?</p> <p>22 A. No.</p> <p>23 Q. How would you -- so you would simply watch</p> <p>24 the -- the warehouse quantities and see when they fell</p> <p>25 below a certain level, and then you would order more</p>
<p style="text-align: right;">31</p> <p>1 Q. What was your next position at Publix?</p> <p>2 A. Inventory manager.</p> <p>3 Q. And what did you do as inventory manager?</p> <p>4 A. Ordered product.</p> <p>5 Q. For which department?</p> <p>6 A. Paper and pet food.</p> <p>7 Q. That's different than a buyer?</p> <p>8 A. Yes.</p> <p>9 Q. Can you explain to me the difference there?</p> <p>10 A. They split the buyer job. Before -- I was the</p> <p>11 first inventory manager for Publix. Before that, the</p> <p>12 buyer ordered the product and did all of the negotiation</p> <p>13 with the suppliers.</p> <p>14 They split the job up so that we could -- for</p> <p>15 the purpose of managing -- managing inventory better.</p> <p>16 So my only job was to manage inventory, write purchase</p> <p>17 orders. The buyer handled everything else in the</p> <p>18 buyer's job.</p> <p>19 Q. And for all these jobs that we've just</p> <p>20 discussed, do all of these apply to all the different</p> <p>21 Publix stores, or are they specific to a certain store?</p> <p>22 So when you purchase paper products or when you</p> <p>23 inventory manage for paper products and pet food, is</p> <p>24 that for all of the Publix stores in the chain?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">33</p> <p>1 product?</p> <p>2 A. That is correct.</p> <p>3 Q. But the stores would essentially place orders</p> <p>4 to the warehouse; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you were working -- well, I don't know</p> <p>7 about pet food -- but those nonperishable items?</p> <p>8 A. I was purchasing paper, plastic bags, aluminum</p> <p>9 foil, and pet food products. That was what I was</p> <p>10 purchasing.</p> <p>11 Q. So nonperishable. So they were delivered to</p> <p>12 the warehouse and they were stored there for a while?</p> <p>13 A. Yes.</p> <p>14 Q. Before going to the stores?</p> <p>15 A. Yes.</p> <p>16 Q. And who was your supervisor when you were in</p> <p>17 the inventory manager position?</p> <p>18 A. Dave Cerra.</p> <p>19 Q. And what role did Dave Cerra have?</p> <p>20 A. Category manager.</p> <p>21 Q. Of which department?</p> <p>22 A. Paper and pet food.</p> <p>23 Q. So as category manager, the inventory manager</p> <p>24 would report to Dave Cerra, and would the buyer also</p> <p>25 represent to Dave Cerra?</p>

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<p style="text-align: right;">34</p> <p>1 A. Yes.</p> <p>2 Q. And then who was Dave Cerra's boss, just so I</p> <p>3 can understand the hierarchy of the department.</p> <p>4 A. Lauren McGill.</p> <p>5 Q. And what position did Lauren McGill hold?</p> <p>6 A. Business development director.</p> <p>7 Q. What was the larger division that you were a</p> <p>8 part of besides paper and products -- paper products?</p> <p>9 A. I don't understand your question.</p> <p>10 Q. Was -- were you in the retail grocery unit?</p> <p>11 A. Yes.</p> <p>12 Q. And what's the formal name of that division?</p> <p>13 A. Grocery retail business unit.</p> <p>14 Q. And what was your next position after inventory</p> <p>15 manager?</p> <p>16 A. Buyer.</p> <p>17 Q. And when did you move to buyer?</p> <p>18 A. I can't remember the exact date, but one or two</p> <p>19 years in the inventory manager position. I really don't</p> <p>20 remember.</p> <p>21 Q. Do you recall if it was before or after 2000?</p> <p>22 A. It had to be before.</p> <p>23 Q. And which department were you a buyer in?</p> <p>24 A. Paper and pet.</p> <p>25 Q. So as a buyer, you would do some of the</p>	<p style="text-align: right;">36</p> <p>1 Q. What else would it involve?</p> <p>2 A. Promotions, which I mentioned.</p> <p>3 Q. Would you -- oh. In terms of managing the</p> <p>4 supply relationship, would you discuss promotions with</p> <p>5 suppliers?</p> <p>6 A. Yes.</p> <p>7 Q. And would that be because the suppliers would</p> <p>8 sometimes participate in the promotions?</p> <p>9 A. Yes.</p> <p>10 Q. So if a supplier participates in a promotion,</p> <p>11 the supplier gives Publix a discount and Publix passes</p> <p>12 that discount on to consumers?</p> <p>13 A. Yes.</p> <p>14 Q. And in that instance, would the supplier</p> <p>15 contact Publix, or would Publix contact the supplier to</p> <p>16 suggest a promotion?</p> <p>17 A. Both.</p> <p>18 Q. So you were in the paper and pet unit, and then</p> <p>19 what was your next position after that?</p> <p>20 A. Buyer of household and baby products.</p> <p>21 Q. Do you know when you began that position?</p> <p>22 A. A year later, approximately.</p> <p>23 Q. And how long were you a buyer of household and</p> <p>24 baby products?</p> <p>25 A. About a year.</p>
<p style="text-align: right;">35</p> <p>1 functions that you mentioned before; correct? So can</p> <p>2 you list those job functions for me?</p> <p>3 MR. GERMAINE: Objection to form. It's</p> <p>4 compound. You can answer the question if you</p> <p>5 understand it.</p> <p>6 A. Promotional activity, pricing, managing</p> <p>7 suppliers.</p> <p>8 Q. And when you say "managing suppliers", do you</p> <p>9 mean having a relationship with contacts at the</p> <p>10 suppliers?</p> <p>11 A. Having meetings with them, yes. There's a lot</p> <p>12 of paperwork of -- you take costs. Managing all the</p> <p>13 functions from a supplier to Publix. You're the main</p> <p>14 contact.</p> <p>15 Q. So would that supply relationship mean</p> <p>16 discussing delivery schedules, if there were problems</p> <p>17 with that?</p> <p>18 A. Yes, if there was problems with it.</p> <p>19 Q. But not otherwise?</p> <p>20 A. Right.</p> <p>21 Q. And would it involve discussing quality</p> <p>22 problems?</p> <p>23 A. Yes.</p> <p>24 Q. And would it involve discussing price changes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">37</p> <p>1 Q. And that job had similar functions, just for</p> <p>2 different products?</p> <p>3 A. Exactly.</p> <p>4 Q. And what was your next position at Publix?</p> <p>5 A. Dairy buyer.</p> <p>6 Q. And when did you become dairy buyer?</p> <p>7 A. A year after.</p> <p>8 Q. And can you think again real hard about when</p> <p>9 that might have been? Was it before or after 2000?</p> <p>10 A. I just really don't remember. You could</p> <p>11 probably get that information from David. Ask him.</p> <p>12 Q. Unfortunately, it's your deposition, so I have</p> <p>13 to ask you. Any -- any idea at all?</p> <p>14 A. I think it was before, but I can't be exact. I</p> <p>15 just can't.</p> <p>16 Q. And how long were you in that position?</p> <p>17 A. A year.</p> <p>18 Q. And in dairy, what products were you</p> <p>19 responsible for purchasing?</p> <p>20 A. Cheese, eggs, desserts.</p> <p>21 Q. Desserts. Would that be frozen desserts?</p> <p>22 A. No, it would be, like, Jell-O. Butter and</p> <p>23 margarine, and refrigerated dough, and refrigerated</p> <p>24 pickles.</p> <p>25 Q. So dairy is a broad category. And when you</p>

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<p style="text-align: right;">38</p> <p>1 went to each of these new departments, what did you do 2 to get familiar with the products and the suppliers?</p> <p>3 A. Visiting the store looking at the sections, 4 obviously. There was some training that happened with 5 the category manager to give insights to the work, the 6 suppliers.</p> <p>7 Q. Would the category manager also have 8 relationships with the suppliers?</p> <p>9 A. Yes.</p> <p>10 Q. So he might intervene and talk to a supplier in 11 a particular instance?</p> <p>12 A. Yes.</p> <p>13 Q. Any other training?</p> <p>14 A. The buyer you took over from would usually have 15 some limited time to give you training.</p> <p>16 Q. Now, we talked earlier about, for nonperishable 17 products, the suppliers would deliver the product to the 18 warehouse, and in the warehouse, the store would then 19 place an order from the warehouse; correct?</p> <p>20 A. Correct.</p> <p>21 Q. So for perishable products like eggs, for 22 example, is that process still the same?</p> <p>23 A. No. Eggs were delivered by the supplier, which 24 is called DSD, direct store delivery.</p> <p>25 Q. So the supplier would be in charge of</p>	<p style="text-align: right;">40</p> <p>1 of the products were delivered directly to the store?</p> <p>2 A. The inventory manager job did not have 3 responsibility for DSD. So there was an inventory 4 manager for dairy but would have nothing to do with DSD 5 products. Only warehouse products.</p> <p>6 Q. After one year as dairy buyer, what was your 7 next position?</p> <p>8 A. Candy buyer. For one year.</p> <p>9 Q. Were these formal rotations, or you just 10 happened to move every year?</p> <p>11 A. I was lucky. It's -- it wasn't formal 12 rotations. Just kind of the way things worked out and 13 where they needed people. So it's kind of no rhyme or 14 reason for it. It just kind of was my path. Some 15 people spend a lot more years in categories. Usually 16 buyers aren't switched that often, but in this case I 17 was. Just kind of how it worked out.</p> <p>18 Q. And when you were working as a buyer, did you 19 work in the corporate headquarters here in Lakeland?</p> <p>20 A. Yes.</p> <p>21 Q. What was your next position after candy buyer?</p> <p>22 A. I was promoted to dairy category manager.</p> <p>23 Q. And what year was that?</p> <p>24 A. I think that was around 2000.</p> <p>25 Q. And I know we've already touched a little bit</p>
<p style="text-align: right;">39</p> <p>1 delivering the eggs from the production facility to each 2 individual Publix store; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And who would supervisor that process to make 5 sure that the delivery was done on time and 6 appropriately?</p> <p>7 A. The supplier managed that process. If there 8 was a problem, we would find out about it, because 9 stores would call in and complain, so that's how we 10 would know that the supplier did not make a delivery or 11 there was issues.</p> <p>12 Q. And would the store complain to the buyer?</p> <p>13 A. The store would complain to the supplier first 14 in most instances, because they would have phone numbers 15 of who their route people were and who their bosses 16 were; and if they couldn't get resolution, then they 17 would call the corporate office, which would be the 18 buyer, would be their main person to call to resolve an 19 issue.</p> <p>20 Q. And you mentioned before, when you were in 21 paper and pet, that there was an inventory manager and a 22 buyer essentially working on the same team for the same 23 product; correct?</p> <p>24 A. Right.</p> <p>25 Q. Was that also the case with dairy, since some</p>	<p style="text-align: right;">41</p> <p>1 on category manager, but can you walk me through your 2 responsibilities as category manager?</p> <p>3 A. It's to manage the buyers, oversee their 4 functions, which include pricing, promotions, and 5 their -- and their management of the -- of the suppliers 6 of the category. It was the category manager's 7 responsibility for product placement, which is 8 planograms, which is a shelf schematic.</p> <p>9 Q. So you would actually be in charge of designing 10 how the products were displayed in the stores?</p> <p>11 A. Yes.</p> <p>12 Q. And would you also participate in the supplier 13 selection process?</p> <p>14 A. Yes.</p> <p>15 Q. Is there a name for that process?</p> <p>16 A. I don't know. That's odd. When we do category 17 reviews --</p> <p>18 Q. And what's a category review?</p> <p>19 A. That's where we review all the products and 20 suppliers in a -- a section, say the milk section, for 21 example, and you review all of that and then decide what 22 your strategy would be, what items you would --</p> <p>23 Q. Strategy with respect to what?</p> <p>24 A. Products, pricing, promotion. All of those 25 functions. So that's the responsibility of the category</p>

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<p style="text-align: right;">42</p> <p>1 manager in the strategy. But you would decide what 2 items you would put in the store, take out of the store 3 and -- through a review. It was reviewing all of those 4 groups, all those products, together. 5 Q. And how often did you conduct those reviews? 6 A. Generally, once a year. 7 Q. And as part of that review, would you consider 8 the suppliers selection? 9 A. Depends. 10 Q. When would you consider changing suppliers? 11 A. We would generally review suppliers for private 12 label items, for Publix branded items, every three to 13 five years. So that's a separate process, really, from 14 category review, but it's kind of related. 15 Q. What about suppliers for your other products? 16 A. Define "other products". 17 Q. Your nonprivate label products. 18 A. That's handled in the category review. 19 Q. And would you only change suppliers if there 20 was a problem with your prior supplier, or would you 21 just periodically rebid the item out to a group of 22 suppliers? 23 A. Talking about private label items, we 24 periodically review those suppliers, like I said, 25 somewhere three to five years. If there's a problem,</p>	<p style="text-align: right;">44</p> <p>1 A. '99. So, yeah. 2 Q. So you believe it was 1999 until nine years 3 later, so approximately 2008? 4 A. Yeah. 5 Q. And at that point you changed to become 6 category manager of frozen food? 7 A. Right. 8 Q. And are you still category manager of frozen 9 food? 10 A. No. 11 Q. What is your position now? 12 A. Business development director of frozen food 13 and dairy. 14 Q. And when did you get that promotion? 15 A. January 2014. 16 Q. And was it a promotion? 17 A. Yeah. Yes. 18 Q. So there was no other position between category 19 manager of frozen food and business development 20 director; is that correct? 21 A. There was. I was category manager of CSD for 22 eight months. 23 Q. What's CSD? 24 A. Carbonated soft drinks and water. It's 25 beverages.</p>
<p style="text-align: right;">43</p> <p>1 that is a cause to do a review immediately. 2 Q. You would do a review immediately? 3 A. If there was a problem and that was deemed 4 cause. The category manager would make that decision. 5 Q. How often did that occur when you were category 6 manager? 7 A. I was category manager for a long time. 8 Q. Well, I'll ask that next then. How long were 9 you category manager? 10 A. About 16 years. 11 Q. And were you category manager of dairy that 12 whole time? 13 A. No. 14 Q. How long were you category manager of dairy? 15 A. Nine to 10. 16 Q. So you said you started as dairy category 17 manager around the year 2000 but you couldn't remember 18 precisely; correct? 19 A. It's not adding up, is it? I told you I 20 couldn't remember the exact years. 21 Q. But around the year 2000, you thought? 22 A. Let's go backwards. I spent right at six years 23 as category manager of frozen food. If it was nine for 24 dairy, that's 15 years. So 15 from 2014. 25 Q. 1999?</p>	<p style="text-align: right;">45</p> <p>1 Q. And when was that? 2 A. My memory's getting better because that's not 3 that far ago, so that would be 2013, in May. 4 Q. Okay. Backing up to dairy again, can you go 5 through -- I know we sort of touched on this a little 6 bit, but can you go through when you were actually 7 category manager of dairy, what products would have been 8 in your purview? 9 MR. GERMAINE: Objection. Asked and answered. 10 Q. You can answer. 11 A. Eggs, milk, margarine, butter, dough, pickles, 12 dairy desserts, which is Jell-O, creamers. 13 Q. And were those products the same products that 14 were in dairy when you were a buyer? 15 A. Cheese was also in there. 16 Yes, they were the same products. 17 Q. And are they the same products that are now in 18 dairy as you are business development director of dairy? 19 A. No. 20 Q. What has changed? 21 A. Cheese is not in there today. That's a meat 22 department group of items. 23 Q. So now that you're business development 24 director, you once again oversee dairy; correct? 25 A. Correct.</p>

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<p style="text-align: right;">46</p> <p>1 Q. And frozen food?</p> <p>2 A. Yes.</p> <p>3 Q. Are there any other products besides those two</p> <p>4 categories?</p> <p>5 A. Kosher products.</p> <p>6 Q. So as category manager of dairy, focusing on</p> <p>7 that position for now, from 1999 to 2008, you had a</p> <p>8 buyer in dairy reporting to you; correct?</p> <p>9 A. I had two buyers.</p> <p>10 Q. And how would those two buyers divide their</p> <p>11 responsibilities?</p> <p>12 A. One had eggs and cheese and desserts. The</p> <p>13 other one had the milk section, the yogurt section,</p> <p>14 which included cultured products, like sour cream.</p> <p>15 Cream cheese was with the cheese.</p> <p>16 Q. So two buyers. Did you have an inventory</p> <p>17 manager underneath you?</p> <p>18 A. No. The system had changed. We had</p> <p>19 organizationally changed and took all those inventory</p> <p>20 managers and put them into a separate group and they</p> <p>21 were managed by a separate person. So I did not manage</p> <p>22 that person directly.</p> <p>23 So there was an inventory manager, which that</p> <p>24 job name changed somewhere in there to be a logistics</p> <p>25 analyst, and they ordered the product.</p>	<p style="text-align: right;">48</p> <p>1 merchandisers. So dairy merchandisers did only the</p> <p>2 dairy. Frozen food merchandisers did only the frozen.</p> <p>3 Later we combined, and I can't remember when,</p> <p>4 we combined that job. So we had a larger number of</p> <p>5 merchandisers, but they did both. They went to stores.</p> <p>6 It's a reorganization of the work. So they went into</p> <p>7 the stores and worked on both dairy and frozen, so...</p> <p>8 Q. And so they would report to both you and the</p> <p>9 category manager for frozen foods at the same time?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And, once again, you would design the</p> <p>12 shelf schematics when you were category manager;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And then work with the merchandisers to</p> <p>16 actually install them?</p> <p>17 A. Yes.</p> <p>18 Q. And as part of that schematics, you mentioned</p> <p>19 promotions earlier. Would certain products be visually</p> <p>20 featured in the shelving units in order to promote them,</p> <p>21 if they were on sale, for example?</p> <p>22 A. No, the shelf schematic was everyday business</p> <p>23 that had nothing to do with promotion.</p> <p>24 Q. How often would you redesign the shelf</p> <p>25 schematic?</p>
<p style="text-align: right;">47</p> <p>1 Q. And did logistic -- did the logistics analyst</p> <p>2 work for MSP?</p> <p>3 A. No.</p> <p>4 Q. So they were still in the retail grocery unit?</p> <p>5 A. Yes.</p> <p>6 Q. And did you have anyone else who reported to</p> <p>7 you when you were category manager?</p> <p>8 A. Yes.</p> <p>9 Q. Who else?</p> <p>10 A. Merchandisers.</p> <p>11 Q. And what do merchandisers do?</p> <p>12 A. Implement the shelf schematics as they change.</p> <p>13 Q. And is there a merchandiser at each store?</p> <p>14 A. No.</p> <p>15 Q. How many merchandisers are there underneath you</p> <p>16 in dairy? Would there be one?</p> <p>17 A. When?</p> <p>18 Q. Between 1999 and 2008.</p> <p>19 A. Eight or nine.</p> <p>20 Q. And they would travel to each of the different</p> <p>21 stores?</p> <p>22 A. Yes.</p> <p>23 Q. And did they work only with dairy shelving?</p> <p>24 A. That system has changed. Hold on for a second.</p> <p>25 It started out with dairy merchandisers and frozen food</p>	<p style="text-align: right;">49</p> <p>1 A. Once or twice a year.</p> <p>2 Q. So when you were category manager of dairy, you</p> <p>3 had two buyers reporting to you and these merchandisers.</p> <p>4 Did you have anyone else reporting to you?</p> <p>5 A. I had two clericals.</p> <p>6 Q. Anyone else?</p> <p>7 A. No.</p> <p>8 Q. And who did you report to?</p> <p>9 A. David Cerra.</p> <p>10 Q. Business development director?</p> <p>11 A. Business development director.</p> <p>12 Q. And did Dave Cerra have that position the</p> <p>13 entire time you were category manager of dairy?</p> <p>14 A. Yes.</p> <p>15 MR. GERMAINE: Can we take a break, Olivia, in</p> <p>16 a minute?</p> <p>17 MS. ADENDORFF: Yeah, we can take a break.</p> <p>18 MR. GERMAINE: Thanks.</p> <p>19 THE VIDEOGRAPHER: We are now off the record.</p> <p>20 The time is 9:35 a.m.</p> <p>21 (Recess from 9:35 a.m. until 9:47 a.m.)</p> <p>22 THE VIDEOGRAPHER: We're now on the record.</p> <p>23 The time is 9:47 a.m.</p> <p>24</p> <p>25 BY MS. ADENDORFF:</p>

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<p style="text-align: right;">50</p> <p>1 Q. I want to talk briefly about terminology that 2 I'll use today during the deposition. First of all, 3 when I generally ask you questions I'm asking about the 4 period 1999 to 2008, unless I tell you otherwise. So 5 basically the time when you were category manager of 6 dairy. 7 A. All right. 8 Q. Does that make sense? 9 And, also, I want to define the word eggs, 10 since it's at issue in this litigation. So eggs can be 11 both egg -- shell eggs and egg products. Do you 12 understand that? 13 A. Yes. 14 Q. And when you were category manager of dairy, 15 did you sell both shell eggs and egg products? 16 A. Yes. 17 Q. What do you understand egg products to be? 18 A. Egg substitutes would be what we call them, but 19 that would be Egg Beaters type of products. 20 Q. So liquid egg? 21 A. Yes. 22 Q. And what liquid egg products did you sell in 23 the stores while you were category manager of dairy? 24 A. Egg Beaters, Publix brand Eggstirs, which was 25 our -- our brand. We sold another brand, and I don't</p>	<p style="text-align: right;">52</p> <p>1 Q. And have you ever heard the term specialty 2 eggs? 3 A. Yes. 4 Q. What do you understand specialty eggs to refer 5 to? 6 A. Shell eggs that are different from the basic 7 commodity shell egg, which would mean -- an example 8 would be organic egg, eggs that the chickens were fed a 9 different diet so the egg had a different claim on it. 10 Like higher Omega 3's would be an example. Free-range 11 eggs would be an example of a specialty egg. So 12 that's -- 13 Q. And are free-range eggs the same thing as 14 cage-free eggs? 15 A. I believe there's a difference, but I can't 16 remember what that is. 17 Q. Would you understand that cage-free was also a 18 specialty egg? 19 A. Yes. 20 Q. What about brown eggs? 21 A. Would be a specialty egg. 22 Q. They would be? 23 A. I don't know. That's gray. Brown eggs is just 24 a difference in the chicken, so that's -- 25 Q. Today when I refer to eggs I'm excluding</p>
<p style="text-align: right;">51</p> <p>1 remember exactly what it was. It might have been a 2 product from Papetti. Liquid egg. 3 Q. Was it Better Than Eggs? 4 A. Yes, I think it was. 5 Q. And were there any other egg substitutes you 6 sold in the stores? 7 A. Not that I recall. 8 Q. What about powdered eggs? 9 A. I was not in charge of powdered eggs. 10 Q. That was outside of dairy? 11 A. Yes. I don't know. 12 Q. Did you -- do you know if you sold them at 13 Publix stores? 14 A. I don't even know. 15 Q. What about frozen eggs? 16 A. I don't remember. 17 Q. You don't recall if you sold frozen eggs? 18 A. Correct. 19 Q. If you had sold frozen eggs, would they have 20 been under your purview as dairy manager? 21 MR. GERMAINE: Objection. 22 A. No. 23 Q. Did you sell them in the frozen food department 24 when you were category manager of frozen? 25 A. I don't remember.</p>	<p style="text-align: right;">53</p> <p>1 specialty eggs from my questions. 2 A. Okay. 3 Q. And I mean specialty eggs to include organic, 4 the nutritionally-enhanced eggs that you mentioned with 5 the different claims, free-range, cage-free, and brown 6 eggs. 7 A. Okay. 8 Q. Okay? In the Publix stores, when you sell 9 shell eggs, white shell eggs, you sell them in a variety 10 of different sizes. So, for example, you sell both a 11 dozen eggs and 18-pack eggs; correct? 12 A. Right. 13 Q. And different sizes in terms of jumbo, extra 14 large, et cetera; correct? 15 A. Yes. 16 Q. What other varieties of shell eggs do you sell, 17 or variations? 18 A. I do not know every specific variety or size 19 from memory that we sell. 20 Q. So you sell different sized eggs? 21 A. (Nodding head.) 22 Q. Yes? 23 A. Yes. 24 Q. Different quantities of eggs? 25 A. Yes.</p>

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<p style="text-align: right;">54</p> <p>1 Q. Do you sell different brands?</p> <p>2 A. Yes.</p> <p>3 Q. And what brands of eggs do you sell?</p> <p>4 A. We sell Eggland's Best, but I would consider</p> <p>5 that a specialty egg.</p> <p>6 Q. What other brands? Do you sell --</p> <p>7 A. 4Grain.</p> <p>8 Q. 4Grain.</p> <p>9 A. That's a specialty egg too. So qualify your</p> <p>10 question to me, because you said --</p> <p>11 Q. What types --</p> <p>12 A. Do you want do we sell brands -- yeah.</p> <p>13 Q. What types of shell eggs do you sell in the</p> <p>14 stores? So we went through different sizes, different</p> <p>15 quantities. And then are all of -- strike that.</p> <p>16 Do you sell Publix brand eggs?</p> <p>17 A. Yes.</p> <p>18 Q. Are there any other brands of shell eggs that</p> <p>19 you sell in the stores?</p> <p>20 A. No.</p> <p>21 Q. Only Publix brand?</p> <p>22 A. Yes.</p> <p>23 Q. All other branded eggs are specialty eggs; is</p> <p>24 that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">56</p> <p>1 Q. How do you spell that?</p> <p>2 A. L-a-m-o-u-r-e-u-x, I think, is the correct</p> <p>3 spelling.</p> <p>4 Q. And Darrell was the first time?</p> <p>5 A. Yes.</p> <p>6 Q. Other than Bessie Foster, James Kreb -- Krebs,</p> <p>7 and Darrell Lamoureux, were there any other individuals</p> <p>8 who worked as buyers for eggs while you were category</p> <p>9 manager of dairy?</p> <p>10 A. Not that I recall.</p> <p>11 Q. And now that you're business development</p> <p>12 director of dairy and frozen foods, who are the</p> <p>13 individuals responsible for egg buying?</p> <p>14 A. Thomas Evers is the buyer. Micky Phillips is</p> <p>15 the category manager.</p> <p>16 Q. Are there any other individuals reporting to</p> <p>17 you who are responsible for eggs now?</p> <p>18 A. No.</p> <p>19 Q. When you worked as category manager, we've</p> <p>20 talked about your relationship with your buyers and your</p> <p>21 merchandisers and your business development director at</p> <p>22 the time. Were there any other individuals in Publix</p> <p>23 with whom you worked on egg purchasing or egg issues,</p> <p>24 issues related to buying eggs or egg products?</p> <p>25 A. The only instance would be if we went through a</p>
<p style="text-align: right;">55</p> <p>1 Q. Are there any other varieties or differences in</p> <p>2 the types of shell eggs you might sell besides size and</p> <p>3 quantity?</p> <p>4 A. I'm sorry. Repeat that question.</p> <p>5 Q. Are there any other differences in the types of</p> <p>6 shell eggs you sell besides the size of the eggs; large,</p> <p>7 jumbo, extra large, and quantities?</p> <p>8 A. No.</p> <p>9 Q. What about grade of eggs?</p> <p>10 A. Could be. I'm not sure. I -- my memory is</p> <p>11 that they were all Grade A.</p> <p>12 Q. When you worked as category manager from 1999</p> <p>13 to 2008, who were the egg buyers that worked for you?</p> <p>14 A. Bessie Foster was the main one.</p> <p>15 Q. Was she in charge of eggs?</p> <p>16 A. Yes.</p> <p>17 Q. Were there any others?</p> <p>18 A. James Krebs was one of my buyers back then. I</p> <p>19 can't remember the time frame.</p> <p>20 Q. Is that K-r-e-b-s?</p> <p>21 A. Yes.</p> <p>22 Q. Anyone else?</p> <p>23 A. You asked specifically about eggs?</p> <p>24 Q. Correct.</p> <p>25 A. Darrell Lamoureux, I believe.</p>	<p style="text-align: right;">57</p> <p>1 review like you spoke of to select suppliers for Publix</p> <p>2 brand eggs, and that would be the MSP person.</p> <p>3 Q. And what about the -- I forget the acronym --</p> <p>4 the corporate quality person?</p> <p>5 A. Corporate quality person would be only with</p> <p>6 issues of complaints or quality of any item in the</p> <p>7 category, including eggs.</p> <p>8 Q. So if there was a customer or store complaint,</p> <p>9 you might talk to the CQA person?</p> <p>10 A. Yes.</p> <p>11 Q. And would the CQA person be involved with the</p> <p>12 selection of suppliers process with MSP?</p> <p>13 A. Yes.</p> <p>14 Q. Anyone else that you worked with on issues</p> <p>15 related to eggs?</p> <p>16 A. No.</p> <p>17 Q. And the egg buyers that we've been talking</p> <p>18 about, are they responsible both for procuring shell</p> <p>19 eggs and egg products?</p> <p>20 A. Yes.</p> <p>21 Q. Can you identify for me all the different units</p> <p>22 at Publix that might purchase eggs? Eggs or egg</p> <p>23 products. Shell eggs.</p> <p>24 A. I may not have knowledge of all.</p> <p>25 Manufacturing/purchasing is the only one I have</p>

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16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 knowledge of for our manufacturing facilities, as an 2 ingredient.</p> <p>3 Q. And retail; correct?</p> <p>4 A. What do you mean by "and retail"?</p> <p>5 Q. You purchase eggs for the retail stores; 6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Are there any other purchases of eggs that you 9 know of within Publix?</p> <p>10 A. No.</p> <p>11 Q. And did you work at all with the individuals 12 responsible for buying eggs for the manufacturing and 13 purchasing division?</p> <p>14 MR. GERMAINE: Objection to form.</p> <p>15 A. No.</p> <p>16 Q. Were you aware of who the suppliers were for 17 that division, for eggs?</p> <p>18 A. Clarify "that division". I think I lost you.</p> <p>19 Q. You mentioned that Publix purchases eggs for 20 its manufacturing plant?</p> <p>21 A. Right.</p> <p>22 Q. And presumably someone in that department would 23 be purchasing those eggs, or would you be purchasing 24 those eggs?</p> <p>25 A. Not me.</p>	<p style="text-align: right;">60</p> <p>1 A. No, I said three to five.</p> <p>2 Q. Three to five. I'm sorry. Three to five 3 years. And does that apply to its Publix brand egg 4 suppliers?</p> <p>5 A. Yes.</p> <p>6 Q. What about egg products?</p> <p>7 A. Yes.</p> <p>8 Q. Are there -- you mentioned earlier that in 9 addition to Publix brand egg products you sell some 10 branded egg products; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And how often do you review the suppliers of 13 the branded egg products?</p> <p>14 A. In the category review.</p> <p>15 Q. Correct.</p> <p>16 A. Which is generally about once a year.</p> <p>17 Q. So since all of the shell eggs you sell are 18 Publix brand eggs; correct --</p> <p>19 A. Correct.</p> <p>20 Q. -- you would review those suppliers every three 21 to five years?</p> <p>22 A. Yes.</p> <p>23 Q. And your Publix brand egg products also every 24 three to five years?</p> <p>25 A. That's the same thing.</p>
<p style="text-align: right;">59</p> <p>1 Q. Someone in that department?</p> <p>2 A. Someone in that department, yes.</p> <p>3 Q. Would you have any conversations with the 4 person in that department about eggs?</p> <p>5 A. I do not recall conversing with them about 6 eggs.</p> <p>7 Q. Do you know who their suppliers were?</p> <p>8 A. No.</p> <p>9 Q. So you did not in any way coordinate your 10 supplier relationships?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. Let's walk through from the beginning the 13 process of how Publix selects suppliers and buys eggs, 14 for eggs specifically. So we talked earlier a little 15 bit about how Publix selected suppliers when you first 16 started working in -- I can't remember which position it 17 was -- but the buying position. Let's focus 18 specifically on eggs and when you were category manager 19 of eggs.</p> <p>20 A. Okay.</p> <p>21 Q. Starting with the first step, when you decide 22 to purchase -- excuse me -- when you decide to review or 23 select a supplier, you mentioned a few moments ago that 24 Publix reviews its Publix brand suppliers every two to 25 three years; correct?</p>	<p style="text-align: right;">61</p> <p>1 Q. Shell eggs and egg products separate.</p> <p>2 A. Oh. Yes. Sorry.</p> <p>3 Q. And branded egg products in the category review 4 annually?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you mentioned that there might -- 7 you might review a supplier in sort of an emergency 8 basis if there was a problem with a supplier; correct?</p> <p>9 A. Correct.</p> <p>10 Q. When you were category manager of dairy, do you 11 recall ever having a problem with a supplier that 12 necessitated an immediate review of that supplier 13 relationship?</p> <p>14 A. In any product, or just eggs?</p> <p>15 Q. In eggs or egg products.</p> <p>16 A. I remember one instance in the Atlanta division 17 we were having some issues getting service in an area of 18 stores, so we reviewed -- we took some action, but that 19 was not to -- to replace the supplier completely. It 20 was -- it ended up being just switching a few stores 21 from one supplier to another so that we could get good 22 service. It was just too far away from them to service. 23 So that's kind of a minor thing, but that's 24 what I remember. It wasn't a full-out review of normal 25 formal review of going through the whole process.</p>

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<p style="text-align: right;">62</p> <p>1 Q. So you didn't bid out the business to other 2 suppliers?</p> <p>3 A. No.</p> <p>4 Q. And when -- when you decided to -- strike that. 5 When the time -- during the time when you were 6 category manager, how many times did you conduct a 7 supplier review for Publix brand shell eggs?</p> <p>8 A. I do not remember exactly. It had to be about 9 two, at least.</p> <p>10 Q. And the same answer for egg products?</p> <p>11 A. Yes.</p> <p>12 Q. Did you do those reviews together? So would 13 you bid out that business together, shell eggs and egg 14 products, or were those separate?</p> <p>15 A. No, they're separate.</p> <p>16 Q. So walk me through the supplier selection 17 process as it relates to eggs specifically. So once you 18 decided it was time for a review, you would draft the 19 questionnaire; is that correct?</p> <p>20 A. Not as category manager.</p> <p>21 Q. Who drafted the questionnaire?</p> <p>22 A. MSP person.</p> <p>23 Q. And you would have input into that 24 questionnaire; is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">64</p> <p>1 A. Yes.</p> <p>2 Q. What do you understand animal welfare to mean?</p> <p>3 A. Treatment of animals, because there's animal 4 activist groups that have folks who are concerned about 5 that, and so food manufacturers in general have 6 practices to treat animals in a way that's good to try 7 to avoid some of that bad publicity. Do the right 8 thing.</p> <p>9 Q. On the questionnaire for eggs, would you have 10 questions about the egg supplier's pricing structure?</p> <p>11 A. I think it was a general question of if they 12 were -- would do a formula price, I think, but I 13 couldn't tell you for sure, again, because I know that's 14 one of the -- you know, there's two ways we would ask 15 for pricing, and so there could have been.</p> <p>16 Q. And you just mentioned there's two ways you 17 would ask for pricing. What were the two ways you would 18 ask for pricing for eggs?</p> <p>19 A. Specifically, I don't remember for sure, 20 but -- because I think in eggs we -- we had a formula 21 price, so that's the way -- we would only ask one way. 22 When I -- to interpret what my answer was, we 23 would decide in the -- in our -- in our meetings which 24 kind of pricing we were going to ask for. So we 25 wouldn't ask the supplier to give it to us two ways. We</p>
<p style="text-align: right;">63</p> <p>1 Q. And you mentioned earlier that there are some 2 standard questions on that questionnaire?</p> <p>3 A. Yes.</p> <p>4 Q. And there are also product-specific questions?</p> <p>5 A. Could be.</p> <p>6 Q. Were there product-specific questions when it 7 came to shell eggs?</p> <p>8 A. I don't remember exactly, but there could be.</p> <p>9 Q. You don't recall any specific requirements for 10 shell eggs?</p> <p>11 A. It's been a lot of years.</p> <p>12 Q. What about for egg products?</p> <p>13 A. Same answer.</p> <p>14 Q. Were there food safety issues that you were 15 concerned about with egg suppliers specifically?</p> <p>16 A. We are concerned about food safety issues with 17 all food products, not necessarily specific to egg 18 suppliers. So questions on the questionnaire would be 19 about their quality control procedures, which directly 20 affect their food safety.</p> <p>21 Q. And do you recall if there was animal welfare 22 questions on that questionnaire?</p> <p>23 A. I really don't remember.</p> <p>24 Q. Do you know what I mean when I say animal 25 welfare?</p>	<p style="text-align: right;">65</p> <p>1 would ask them all to give it to us only one of the 2 ways. But there's just a plain quoted price and then 3 there's a formula price. So, with eggs, it was a 4 formula price.</p> <p>5 Q. And when you say eggs there, are you speaking 6 about shell eggs?</p> <p>7 A. Shell eggs.</p> <p>8 Q. Only?</p> <p>9 A. Only.</p> <p>10 Q. What about for egg products?</p> <p>11 A. I don't recall which way that went. I think it 12 was just a straight price, but I'm not sure.</p> <p>13 Q. And for the formula price for shell eggs, what 14 was the formula based on?</p> <p>15 A. I do not recall the formula, but I do know the 16 only thing I do remember is that it was -- the main base 17 was off of the Urner Barry market price.</p> <p>18 Q. And what is Urner Barry?</p> <p>19 A. It's a commodity price index.</p> <p>20 Q. And does Urner Barry provide different 21 commodity prices for different types or sizes of eggs?</p> <p>22 A. I don't know.</p> <p>23 Q. So do you know if there's just Urner Barry eggs 24 or if it's Urner Barry jumbo eggs price?</p> <p>25 A. Yeah, I don't remember.</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 Q. And is Urner Barry one price for the entire 2 country? 3 A. I don't know. 4 Q. You don't know if there's, for example, Urner 5 Barry South Central price? 6 A. No, I don't. 7 Q. When you talked about the supplier review 8 process earlier, you mentioned that as part of that 9 process you might visit facilities; is that correct? 10 A. Correct. 11 Q. Supplier facilities. Did you ever visit 12 supplier facilities for an egg supplier review? 13 A. I remember visiting an egg facility in Dover. 14 Q. And what company's facility is that? 15 A. That would be a Tampa Farms facility. 16 Q. Dover, Maryland? 17 A. No. Florida. 18 Q. Florida. Delaware? 19 Tampa Farms, you said? 20 A. Yes. 21 Q. And what did you see when you went to the Tampa 22 Farms egg facilities? 23 A. Chickens. 24 Q. Did you go in the chicken -- 25 A. I did. Went in the chicken houses.</p>	<p style="text-align: right;">68</p> <p>1 Q. Was it early in your tenure as a category 2 manager of dairy? 3 A. Most likely. 4 Q. And in the facilities, were the eggs being 5 raised in cages? 6 A. Yes. 7 Q. And while you were there, did anyone explain to 8 you any regulations or their policies regarding cage 9 size? 10 A. I don't recall any conversation about that on 11 the visit. 12 Q. Have you heard the term battery-cage? 13 Battery-cage. 14 A. No. 15 Q. And you also mentioned that during the supplier 16 selection process you would taste-test products or test 17 the products? 18 A. Yes. 19 Q. And taste-test -- excuse me -- test them for 20 taste? 21 A. Yes. 22 Q. And who would handle the taste test? 23 A. CQA person. 24 Q. And what were they looking for when they were 25 taste-testing?</p>
<p style="text-align: right;">67</p> <p>1 Q. And did you tour any of the processing 2 facilities? 3 A. Yes, we did. 4 Q. Did you meet with your sales contact there? 5 A. Yes, we did. 6 Q. What else did you do at Tampa Farms? 7 A. We -- we toured the facility. Had a brief 8 meeting at the end for any questions. 9 Q. And what were you looking for when you were 10 touring the facilities? 11 A. It was general knowledge for us as a buying 12 team. We had our CQA person with us, and obviously they 13 may have been looking for some other stuff, like quality 14 control issues, because that concerns their job, but 15 it's -- 16 Q. You said the buying team, so were you on this 17 visit -- and who else? CQA person. Do you know who -- 18 A. The buyer. The buyer. 19 Q. The buyer. Do you know who the CQA person was 20 that accompanied you? 21 A. Connie DuBois, I believe it was. 22 Q. And who was the buyer? 23 A. I'm not sure. 24 Q. When was this visit? 25 A. I'm not -- I don't remember the date or year.</p>	<p style="text-align: right;">69</p> <p>1 A. I do not remember their criteria for eggs. 2 Q. Do you remember the taste-testing ever 3 affecting your decision of supplier, choice of supplier? 4 A. In eggs, no. 5 Q. And when you say eggs, are you referring to 6 both shell eggs and egg products? 7 A. Referring to shell eggs. 8 Q. What about with egg products? Do you recall it 9 ever affecting supplier choice? 10 A. I can't remember if it did or not. 11 (Bates Exhibit 3 was marked for 12 identification.) 13 Q. In front of you you have what's been marked as 14 Exhibit 3, and you're welcome to flip through this, but 15 it's a collection of different documents. 16 If you'd turn to page -- the page at the bottom 17 that's Bates stamped 8648 at the end. 18 A. 864 -- 19 Q. Eight. And Exhibit 3 is a highly confidential 20 document Bates stamped PUB_EGGS_008645 at the beginning. 21 If you'll just take a second to look at this 22 e-mail. 23 A. I'm sorry. 8645? 24 Q. 8648. 25 A. Okay.</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 Q. Do you recognize this e-mail?</p> <p>2 A. No.</p> <p>3 Q. And do you know who Elise Richardson is?</p> <p>4 A. No, I do not remember Elise Richardson.</p> <p>5 Q. What about Gerald Bondoc?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Gerald Bondoc?</p> <p>8 A. Worked in MSP.</p> <p>9 Q. And Steve Hicks?</p> <p>10 A. Yes. He worked in MSP.</p> <p>11 Q. Floyd Freeman?</p> <p>12 A. Yes. He worked in MSP also.</p> <p>13 Q. And the subject in this e-mail is "Egg</p> <p>14 Substitutes"; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And can you read the first paragraph of this</p> <p>17 e-mail into the record?</p> <p>18 A. "The taste panel for this category proved to be</p> <p>19 very informative. Unfortunately, the product from the</p> <p>20 low bidder in the auction did not compare favorably with</p> <p>21 the NRB (or anything else). Only two of the products</p> <p>22 compared favorably to the NRB. The team has recommended</p> <p>23 that we go with the lowest of these two bids - Michael's</p> <p>24 \$999,105 resulted in a \$609,895, 38.30% savings off the</p> <p>25 branded product and 15.38% savings from the target</p>	<p style="text-align: right;">72</p> <p>1 trying to have a product that is equal to or better than</p> <p>2 the national reference brand. That's what it means.</p> <p>3 Q. So you would taste-test a product to see if it</p> <p>4 was as tasty or more tasty than the national reference</p> <p>5 brand; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And Publix's goal was to purchase good-tasting</p> <p>8 products?</p> <p>9 A. Yes.</p> <p>10 Q. Including egg products?</p> <p>11 A. Yes.</p> <p>12 Q. And in this e-mail, it appears that they're</p> <p>13 discussing a product that did not taste as good as the</p> <p>14 NRB and that it appears they decided to not choose that</p> <p>15 product because of that factor.</p> <p>16 When you were conducting category reviews for</p> <p>17 eggs, would you ever exclude an egg product that did not</p> <p>18 taste as good as the NRB?</p> <p>19 A. Yes.</p> <p>20 Q. And would you do so even if that less tasty</p> <p>21 product was priced lower than the other option?</p> <p>22 A. Yes.</p> <p>23 Q. He also refers here to target pricing. What's</p> <p>24 target pricing? I say "he". It's a she. Elise.</p> <p>25 MR. GERMAINE: Objection to form.</p>
<p style="text-align: right;">71</p> <p>1 pricing."</p> <p>2 Q. So is this e-mail discussing a taste test of an</p> <p>3 egg product?</p> <p>4 MR. GERMAINE: Objection to form. Lacks</p> <p>5 foundation.</p> <p>6 Q. Do you understand egg substitutes to mean egg</p> <p>7 products?</p> <p>8 A. Egg substitutes is liquid eggs.</p> <p>9 Q. And the taste panel here, do you know -- when</p> <p>10 Publix did taste-testing of eggs, would it be conducted</p> <p>11 by a taste panel?</p> <p>12 A. Yes.</p> <p>13 Q. So does it appear here that this e-mail is</p> <p>14 referring to a taste panel of egg substitutes, people</p> <p>15 testing egg substitutes for taste?</p> <p>16 MR. GERMAINE: Objection to form.</p> <p>17 A. It is based on the criteria determined by CQA.</p> <p>18 Q. And do you recall a category review for egg</p> <p>19 substitutes around October of 2002?</p> <p>20 A. No.</p> <p>21 Q. And what is NRB?</p> <p>22 A. National reference brand.</p> <p>23 Q. What is -- what does that mean within Publix?</p> <p>24 A. A private label item Publix brand has a target.</p> <p>25 The target is the national reference brand. So we're</p>	<p style="text-align: right;">73</p> <p>1 Q. Let me ask, when you were conducting reviews of</p> <p>2 the suppliers for eggs, would you have a certain target</p> <p>3 price that you were hoping for in mind when you sent out</p> <p>4 the request for prices?</p> <p>5 A. Yes, and that's probably what that's referring</p> <p>6 to. We have a strategy of what we would like to price</p> <p>7 private label products at, just like you're comparing to</p> <p>8 the NRB. So that's probably what they're referring to</p> <p>9 is it is a -- it's kind of a guide of where -- a range</p> <p>10 of what we would want to be around. Obviously, if the</p> <p>11 pricing is too high, just like you go into the store, if</p> <p>12 the Publix brand item is way above Tide, you probably</p> <p>13 would not purchase it. You'd figure Tide's better. So,</p> <p>14 yeah, that's what that is alluding to, would be my</p> <p>15 perception.</p> <p>16 Q. So Publix conducted taste tests of egg</p> <p>17 products. Did it also conduct taste tests for shell</p> <p>18 eggs?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. I really can't remember tasting shell eggs, so</p> <p>21 I just can't remember.</p> <p>22 Q. Do you recall choosing -- do you recall if</p> <p>23 while you were category manager you selected Michael's</p> <p>24 as a brand for your egg products?</p> <p>25 A. I know we did business with Michael's Foods,</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 but I don't remember if -- it's just been a long time.</p> <p>2 I don't remember specifically if we selected them or</p> <p>3 not.</p> <p>4 Q. What are the most important factors in choosing</p> <p>5 an egg supplier for both -- well, let's start with shell</p> <p>6 eggs. What are the most important factors in choosing a</p> <p>7 shell egg supplier?</p> <p>8 A. Their ability to supply, service us, quality of</p> <p>9 product, and then cost.</p> <p>10 Q. And did you list those in order of importance?</p> <p>11 A. Yes.</p> <p>12 Q. And when you said quality, what -- what, to</p> <p>13 your mind, does egg quality entail?</p> <p>14 A. Best practices in the industry so that you</p> <p>15 have, you know, for example, their -- in their</p> <p>16 processing, so they have washed them properly so that</p> <p>17 they're clean, so that there's -- to avoid food safety</p> <p>18 issues, as you mentioned earlier, that type of thing.</p> <p>19 So it's quality controls, so you have a good --</p> <p>20 you know, less broken eggs, less eggs that -- you know,</p> <p>21 they grade them. So that you have the agreed-upon</p> <p>22 grade. Those types of things.</p> <p>23 Q. When you said best practices, does that include</p> <p>24 animal welfare practices?</p> <p>25 A. It could, yes.</p>	<p style="text-align: right;">76</p> <p>1 private label brand, the new supplier has to get a label</p> <p>2 approved, so that takes time and some effort on Publix's</p> <p>3 part.</p> <p>4 Q. And who designs the Publix brand label?</p> <p>5 A. Our marketing department.</p> <p>6 Q. Do you as category manager have any input into</p> <p>7 that -- into that process of designing the carton?</p> <p>8 A. I have -- yes, I have input, but I'm not the</p> <p>9 decision-maker on the -- it's kind of split. The</p> <p>10 graphical components, they have the decision for that,</p> <p>11 but, yes, I have input.</p> <p>12 Q. So would anyone else have input besides the</p> <p>13 category manager and the marketing department?</p> <p>14 A. The supplier always has input, because they are</p> <p>15 supposed to be the expert in their industry and know</p> <p>16 government regulations that may be involved with</p> <p>17 labeling and stuff, so it's their responsibility to make</p> <p>18 sure we don't make a label that's noncompliant with any</p> <p>19 regulation.</p> <p>20 Q. And once the marketing department in Publix</p> <p>21 designed the label, is it the supplier that actually</p> <p>22 makes the cartons and prints the labels and puts the</p> <p>23 eggs in the cartons?</p> <p>24 A. Yes.</p> <p>25 Q. And when you price -- when you bid out pricing</p>
<p style="text-align: right;">75</p> <p>1 Q. And ability, you referred to ability being the</p> <p>2 most important quality. Is that the ability to supply</p> <p>3 the volume Publix needs?</p> <p>4 A. It includes the volume and the timeliness.</p> <p>5 Q. And just to focus on cost for a second, again,</p> <p>6 you mentioned that the Publix brand shell eggs are</p> <p>7 priced based off of a formula, whose main component is</p> <p>8 Urner Barry; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Focusing on egg product suppliers, what are the</p> <p>11 most important qualities when determining an egg product</p> <p>12 supplier?</p> <p>13 A. You're talking about egg substitutes?</p> <p>14 Q. Yes.</p> <p>15 A. It's -- it's the same three.</p> <p>16 Q. How difficult is it for Publix to change an egg</p> <p>17 supplier?</p> <p>18 A. As compared to what? That's --</p> <p>19 Q. Does Publix make any investment that would make</p> <p>20 it difficult for you to choose an egg -- to switch an</p> <p>21 egg supplier, or is it simply a matter of a different</p> <p>22 delivery truck coming up on Mondays?</p> <p>23 A. No, it's not that simple. There's packaging is</p> <p>24 the complexity there, because Publix, generally we</p> <p>25 control that label, so when you switch suppliers in any</p>	<p style="text-align: right;">77</p> <p>1 for eggs, we talked about that a moment ago with the</p> <p>2 general category review process, when you do that for</p> <p>3 eggs and you ask for prices, do you break down that</p> <p>4 price in terms of the price of the eggs and then a</p> <p>5 separate line item for delivery charge and a separate</p> <p>6 line item for packaging, or how does that work?</p> <p>7 A. I don't remember. I do not remember the</p> <p>8 details of the formula cost.</p> <p>9 Q. You don't -- you don't recall whether packaging</p> <p>10 was included in the price?</p> <p>11 A. No, I do not recall.</p> <p>12 Q. You don't recall when delivery charges was</p> <p>13 included in the price?</p> <p>14 A. Delivery charges would be included in the</p> <p>15 price, but it may not be broken out separately. I don't</p> <p>16 remember what that formula looks like.</p> <p>17 Q. And as I'm thinking about this, you're</p> <p>18 delivering these eggs to the stores because they can't</p> <p>19 stay at a warehouse because they're perishable; correct?</p> <p>20 The DSD process that we discussed?</p> <p>21 MR. GERMAINE: Objection to form.</p> <p>22 Q. The eggs that you -- shell eggs and egg</p> <p>23 products that you buy, do they both go through the DSD</p> <p>24 process that we discussed? Direct store delivery?</p> <p>25 A. The shell eggs do.</p>

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<p style="text-align: right;">78</p> <p>1 Q. Do the egg products?</p> <p>2 A. No, they go to the warehouse.</p> <p>3 Q. So for the direct store delivery of shell eggs,</p> <p>4 "the stores" are all however many of Publix stores;</p> <p>5 right?</p> <p>6 A. (Nodding head.)</p> <p>7 Q. And would you have a supplier for egg -- shell</p> <p>8 eggs delivering eggs to all those different stores?</p> <p>9 A. Yes.</p> <p>10 Q. And that would be over a wide area; right?</p> <p>11 A. Yes.</p> <p>12 Q. And would the charges for those eggs depend at</p> <p>13 all on where those deliveries had to go and what volume</p> <p>14 were going to which locations? Would that vary?</p> <p>15 MR. GERMAINE: Objection to form.</p> <p>16 A. The price would be -- all those costs are</p> <p>17 rolled in as averaged, to answer the question, where</p> <p>18 you're going with that. So it's one price for a -- the</p> <p>19 vendor. So Tampa Farms' price would be for a wide area,</p> <p>20 but it would be -- it's not different prices by store,</p> <p>21 no. It's one price for all that group of stores.</p> <p>22 Q. And Tampa Farms would actually handle the whole</p> <p>23 process of getting the eggs to the individual stores; is</p> <p>24 that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">80</p> <p>1 A. I don't remember.</p> <p>2 Q. Was it Papetti's?</p> <p>3 A. It may have been.</p> <p>4 Q. Do you recall if it was Michael Foods?</p> <p>5 A. It may have been. That's why I don't remember.</p> <p>6 I remember both those companies, but I don't remember</p> <p>7 which one had the business. It may have even been</p> <p>8 ConAgra. I think they were in the business too. So I'm</p> <p>9 just not sure.</p> <p>10 Q. And you testified earlier that Publix also</p> <p>11 purchased branded liquid eggs?</p> <p>12 A. Yes.</p> <p>13 Q. And I think you testified that that was --</p> <p>14 well, which brands did they purchase?</p> <p>15 A. Which brands did we purchase?</p> <p>16 Q. Uh-huh, of liquid branded -- liquid eggs.</p> <p>17 National brands.</p> <p>18 A. Egg Beaters.</p> <p>19 Q. And is Egg Beaters a ConAgra product?</p> <p>20 A. Yes.</p> <p>21 Q. And did you purchase Better'n Eggs?</p> <p>22 A. Yes, I remember that brand too.</p> <p>23 Q. And is that a Michael's product?</p> <p>24 A. I think so.</p> <p>25 Q. Did you purchase any egg whites?</p>
<p style="text-align: right;">79</p> <p>1 Q. And from the -- from 1999 to 2008, who were the</p> <p>2 suppliers for the Publix brand shell eggs?</p> <p>3 A. I remember doing business with Tampa Farms,</p> <p>4 Hillandale in Jacksonville, and I think it was Country</p> <p>5 Charm in Atlanta. And when I first came on the desk,</p> <p>6 I'm not sure that we did any business with Cal-Maine. I</p> <p>7 think Cal-Maine came on later. As we expanded into</p> <p>8 areas and we bought from Cal-Maine, then obviously</p> <p>9 Cal-Maine bought Hillandale later, and so Hillandale</p> <p>10 changed to Cal-Maine. That's the egg suppliers I</p> <p>11 remember.</p> <p>12 Q. So other than Tampa Farms, Hillandale, Country</p> <p>13 Charm, and Cal-Maine, were there any others?</p> <p>14 A. Not that I recall.</p> <p>15 Q. And you mentioned that Cal-Maine came on later,</p> <p>16 but let's just take the other three. Were those other</p> <p>17 three suppliers all supplying you with shell eggs at the</p> <p>18 same time?</p> <p>19 A. Yes.</p> <p>20 Q. So were they divided up by geographic region?</p> <p>21 A. Yes.</p> <p>22 Q. And what about the suppliers for egg</p> <p>23 substitutes? Liquid eggs. Publix brand.</p> <p>24 A. One supplier for the whole company.</p> <p>25 Q. And who was that?</p>	<p style="text-align: right;">81</p> <p>1 A. Yes.</p> <p>2 Q. Who were the suppliers of egg whites?</p> <p>3 A. I don't remember for sure. Michael Foods.</p> <p>4 (Bates Exhibit 4 was marked for</p> <p>5 identification.)</p> <p>6 Q. You have in front of you what's been marked as</p> <p>7 Exhibit 4, and I represent to you that this is a</p> <p>8 document that your attorneys have filed in this</p> <p>9 litigation. And you'll see at the top Publix's Notice</p> <p>10 Regarding Direct Purchaser Relationships.</p> <p>11 And underneath there, it lists three companies</p> <p>12 who this document represents Publix purchased eggs or</p> <p>13 egg products -- shell eggs or egg products from.</p> <p>14 Cal-Maine Foods, Rose Acre Farms, and Michael Foods.</p> <p>15 You mentioned that Cal-Maine Foods was a</p> <p>16 supplier for Publix brand shell eggs; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you mentioned Michael Foods supplying egg</p> <p>19 products; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recognize the name Rose Acre Farms?</p> <p>22 A. It's familiar, but I don't remember what we</p> <p>23 purchased or if we purchased from them.</p> <p>24 Q. And going back to the category review process</p> <p>25 where you were considering different suppliers, how many</p>

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<p style="text-align: right;">82</p> <p>1 egg suppliers would you consider? Let's take shell eggs 2 as an example. How many shell egg suppliers would you 3 consider when you were sending out the questionnaire for 4 shell egg suppliers? 5 A. I don't remember at all. 6 Q. Would it be more than five? 7 A. (Shaking head.) I don't know. 8 Q. Would you send the questionnaire only to your 9 existing suppliers? 10 MR. GERMAINE: Objection to form. 11 Q. You can answer. 12 A. No, we'd send it to more than to our existing 13 suppliers. 14 Q. So you testified that you had between three and 15 four suppliers for shell eggs; correct? 16 A. (Nodding head.) 17 Q. So you would -- you would send the 18 questionnaire to more than just those three to four? 19 A. Yes. 20 Q. Would it be more than 10? 21 A. I don't know. 22 Q. This might be a good time to take a break, or 23 do you want to continue? 24 A. We can go a little longer if you want to. I'm 25 okay now.</p>	<p style="text-align: right;">84</p> <p>1 Q. So specialty eggs is a growing segment of the 2 egg market? 3 A. Yes. 4 Q. And do those specialty eggs produce higher 5 retail margins for Publix? 6 A. I can't remember the margins specifically. The 7 prices would be higher, but -- 8 Q. The consumer price would be higher? 9 A. Yeah. 10 Q. Would your cost be higher? 11 A. Yes. 12 Q. Is the growth in those items during that time 13 period, was that cannibalizing the sale of Publix brand 14 shell eggs? 15 MR. GERMAINE: Objection to form. 16 A. I don't remember. 17 Q. So when you said there was growth in specialty 18 eggs, was that growth in the overall egg market? 19 A. I don't remember if overall eggs were growing. 20 The specialty eggs definitely were. 21 Q. Do you know if some of the specialty egg 22 products that Publix sells meet the certified humane 23 standard? 24 A. Meets what? 25 Q. Certified humane.</p>
<p style="text-align: right;">83</p> <p>1 Q. Okay. And you testified that you purchased 2 specialty eggs for Publix when you were category 3 manager; right? 4 A. Yes. 5 Q. And can you testify specifically as to which 6 kinds of specialty eggs Publix purchased? 7 A. I can only tell you what I remember, which may 8 not be all, which won't be all-inclusive, but I do 9 remember purchasing 4Grain Eggs, which was a brand that 10 Tampa Farms created. I remember purchasing Eggland's 11 Best. There was a brand -- we bought an organic egg 12 from -- I think Country Hen was the brand. And we 13 bought an egg that was called Davidson's Pasturized Egg 14 I remember. That's what I remember. 15 Q. Did you purchase any cage-free eggs? 16 A. Yes. 17 Q. And during the time when you were category 18 manager, was the demand for these specialty eggs growing 19 in the stores? 20 MR. GERMAINE: Objection to form. 21 Q. You can answer. 22 A. There was growth in those items, yes, sales 23 growth, which -- 24 Q. In which items specifically? In all of them? 25 A. In general, in all of them, yes.</p>	<p style="text-align: right;">85</p> <p>1 A. I don't remember. 2 Q. Do you -- are you familiar with that standard? 3 A. I'm not sure I remember that. I don't remember 4 that particular term. 5 Q. You testified that for Publix brand shell eggs 6 Publix designs the packaging but the suppliers actually 7 produce and supply the packaging; correct? 8 A. Right, yes. 9 Q. Is that also true for Publix brand egg 10 products? 11 A. I thought that's what we were talking about. 12 Did I misunderstand the question? 13 Q. We were talking about shell egg cartons. 14 A. Which are Publix brand eggs for the most part. 15 Q. When I say egg products, I mean liquid eggs, 16 powdered eggs, egg whites. 17 A. Oh. Yes. 18 Q. Is that true for brand -- for national brand 19 eggs? 20 MR. GERMAINE: Objection to form. 21 A. No. 22 Q. Publix has no involvement in developing the 23 packaging of national brand eggs? 24 A. No. 25 Q. And the national brand eggs suppliers supply</p>

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<p style="text-align: right;">86</p> <p>1 their own packaging; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Since 2008, has Publix changed its egg</p> <p>4 suppliers, to your knowledge?</p> <p>5 A. I don't recall changing suppliers. They just</p> <p>6 changed ownerships, because Tampa Farms ended up getting</p> <p>7 bought by Cal-Maine too. So that's what happened.</p> <p>8 There was no changes that I remember, and why I'm</p> <p>9 thinking, because Hillandale was where I thought there</p> <p>10 was a change, but they were just bought by Cal-Maine, so</p> <p>11 that's not really a change. So I don't recall a change</p> <p>12 in egg suppliers.</p> <p>13 Q. So you mentioned that Cal-Maine purchased</p> <p>14 Hillandale and Tampa Farms; correct?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And so does that -- and you said that you don't</p> <p>17 recall a change. So does that mean that right now today</p> <p>18 Publix's -- Publix brand shell eggs suppliers are</p> <p>19 Cal-Maine -- I'll look at the list -- and Country Charm?</p> <p>20 A. To my knowledge, that's what it is.</p> <p>21 Q. And for liquid eggs, are those suppliers still</p> <p>22 Michael Foods and ConAgra?</p> <p>23 A. I don't remember. They've been through a</p> <p>24 review. I don't know what happened.</p> <p>25 Q. When was that review? Before you became</p>	<p style="text-align: right;">88</p> <p>1 A. Right. The supplier pays for them.</p> <p>2 Q. The supplier pays for them?</p> <p>3 A. (Nodding head.)</p> <p>4 Q. The supplier -- the supplier conducts audits</p> <p>5 done by third parties; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And does it share that audit -- those audit</p> <p>8 results with Publix?</p> <p>9 A. Yes.</p> <p>10 Q. How often are those audits conducted?</p> <p>11 A. I'm not sure.</p> <p>12 Q. Would they be annually?</p> <p>13 A. Most likely. That would be a CQA function.</p> <p>14 Q. Do you know what those audits are looking for</p> <p>15 or monitoring?</p> <p>16 A. No, I really don't. That's a CQA question.</p> <p>17 (Bates Exhibit 5 was marked for</p> <p>18 identification.)</p> <p>19 MS. ADENDORFF: Did I give anyone two?</p> <p>20 THE WITNESS: You gave me two.</p> <p>21 BY MS. ADENDORFF:</p> <p>22 Q. You have in front of you what's been marked as</p> <p>23 Exhibit 5. This is a confidential document --</p> <p>24 (Telephone interruption.)</p> <p>25 MS. ADENDORFF: I'm sorry.</p>
<p style="text-align: right;">87</p> <p>1 business development director?</p> <p>2 A. Yes.</p> <p>3 Q. So you don't know the current suppliers for</p> <p>4 liquid eggs?</p> <p>5 A. No.</p> <p>6 Q. Going back to quality standards for eggs, you</p> <p>7 mentioned food safety and breakage and issues like that;</p> <p>8 correct?</p> <p>9 A. (Nodding head.)</p> <p>10 Q. Does Publix do any audits of their egg</p> <p>11 suppliers?</p> <p>12 A. To my knowledge, no, Publix does not.</p> <p>13 Q. Does Publix hire any third parties to conduct</p> <p>14 audits?</p> <p>15 A. To my knowledge, Publix does not hire a third</p> <p>16 party to do it.</p> <p>17 Q. To your knowledge, there's no audits of your</p> <p>18 outside egg suppliers?</p> <p>19 A. There is.</p> <p>20 Q. Who conducts those audits?</p> <p>21 A. I don't know.</p> <p>22 Q. A third party conducts audits?</p> <p>23 A. Right.</p> <p>24 Q. And did you say no to my earlier question</p> <p>25 because you don't know if Publix pays for them?</p>	<p style="text-align: right;">89</p> <p>1 Q. It's been Bates stamped CM00479571.</p> <p>2 Looking at the top, this appears to be an</p> <p>3 e-mail from Ryn McDonald to a variety of people. Do you</p> <p>4 recognize any of the names on this e-mail?</p> <p>5 A. Ken Paramore is familiar, but I cannot</p> <p>6 remember. That's the only name that is familiar.</p> <p>7 Q. What about Jeff Hardin?</p> <p>8 A. I don't remember that name.</p> <p>9 Q. And do you see underneath Ryn McDonald's name</p> <p>10 it says Director of Safety Cal-Maine Foods. Does that</p> <p>11 refresh your recollection at all that Ken Paramore you</p> <p>12 might know because he works at Cal-Maine Foods?</p> <p>13 A. Yes.</p> <p>14 Q. And is he the salesperson at Cal-Maine Foods,</p> <p>15 to your knowledge?</p> <p>16 A. I don't remember.</p> <p>17 Q. But you believe you've had dealings with him at</p> <p>18 Publix while you've been at Publix?</p> <p>19 A. I remember the name. That's familiar, but</p> <p>20 that's it.</p> <p>21 Q. In looking at the bottom, you'll see that this</p> <p>22 is an e-mail from Connie DuBois. You testified earlier</p> <p>23 that Connie DuBois is in CQA for Publix; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And if you look at this e-mail below, it says:</p>

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<p style="text-align: right;">90</p> <p>1 "Publix would require an annual animal welfare audit for 2 each facility." 3 This is an e-mail from August 2007. And if you 4 look at the cc line, you'll see your name, Greg Bates. 5 Do you recall this e-mail? 6 A. No. 7 Q. Does that refresh your recollection at all as 8 to how often Publix requires audits of its egg 9 suppliers? 10 A. Annually is what it says in the e-mail. 11 Q. Do you recall that? Is that true? 12 A. That would be true. 13 Q. And do you know -- or do you recall that those 14 audits have anything to do with animal welfare? 15 A. That is what the e-mail says. 16 Q. Is that true? 17 A. I have no reason to doubt it. 18 Q. And do you know -- strike that. 19 (Bates Exhibit 6 was marked for 20 identification.) 21 Q. You have in front of you Exhibit 6, a highly 22 confidential document Bates stamped PUB_EGGS_020802. 23 And you'll see that this document appears -- it 24 says at the top that it's a Caged Layers Audit 25 Checklist, and it appears to be one performed on Tampa</p>	<p style="text-align: right;">92</p> <p>1 A. Yes. 2 Q. Would you see any documents reflecting audit 3 results during that process? 4 A. I don't really remember if -- looking at -- 5 looking through audits, but I would tell you that the 6 CQA person would -- would bring that type of information 7 to the meetings so we could review if we needed it if 8 necessary. 9 Q. Looking at the first question on this audit 10 checklist, it says: "Does the layer house provide the 11 following average cage space?" And then it has: "For 12 checks hatched after April 1st, 2002, 56 square inches. 13 For chicks hatched after October 1st, 2003, 58 square 14 inches." 15 A. What line are you on? I'm sorry. 16 Q. I'm sorry. I'm at Question 1. 17 A. Okay. 18 Q. And basically it goes on to list the certain 19 dates and for each date a certain minimum average cage 20 space required. Do you see that? 21 MR. GERMAINE: Objection to form. 22 Q. It's all in that first question. 23 A. Oh, okay. Okay. I see it. 24 Q. And do you see that the number of inches there 25 increases as the date gets later?</p>
<p style="text-align: right;">91</p> <p>1 Farm Service. Have you ever seen a checklist like this 2 before? 3 A. No, not to my recollection. 4 Q. Do you know if Publix keeps these kinds of 5 records of audits done on egg suppliers? 6 MR. GERMAINE: Objection to form. Lacks 7 foundation. 8 A. I don't know if they keep this specific kind of 9 audit. 10 Q. Who at Publix would have had responsibility for 11 keeping any documents related to supplier audits for 12 eggs? 13 A. Connie DuBois would be the person I would 14 assume would be responsible for that in CQA. 15 Q. If an egg supplier were to fail an audit, would 16 you as category manager have found out about it? 17 A. Yes. 18 Q. Do you recall that ever occurring? 19 A. I do not remember if somebody failed an audit. 20 Q. Did you receive regular reports of audits? 21 A. No. As I recall, generally they would only 22 communicate with us if there was an issue, if somebody 23 did fail an audit or something. 24 Q. And would it be discussed as part of the 25 supplier selection process?</p>	<p style="text-align: right;">93</p> <p>1 MR. GERMAINE: Objection to form. 2 A. Yes. 3 Q. And are you aware during the time that you were 4 category manager of dairy, which this list here goes 5 from April 1st, 2002, to April 1st, 2008, that cage 6 space requirements for cage laying hens were increasing? 7 Cage space, yeah. 8 A. What was the question? 9 Q. Were you aware when you were category manager 10 of dairy that cage space requirements for egg-laying 11 hens were increasing in any way? 12 A. I recall conversations about -- with Tampa 13 Farms about cage space. I've never recall -- I don't 14 recall seeing this document or a plan like this with 15 specific size, but that was part of animal welfare, 16 having more space for chickens. So that's just the -- 17 in general, remember that's -- 18 Q. So you understood animal welfare for egg-laying 19 hens to involve cage space? 20 A. Yes. 21 Q. And did you understand that increasing cage 22 space would increase the animal welfare of those hens? 23 MR. GERMAINE: Objection to form. 24 A. Yes. 25 MS. ADENDORFF: That might be a good place to</p>

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<p style="text-align: right;">94</p> <p>1 take a break.</p> <p>2 MR. GERMAINE: Okay.</p> <p>3 THE VIDEOGRAPHER: We are now off the record.</p> <p>4 The time is 10:53 a.m.</p> <p>5 (Recess from 10:53 a.m. until 11:04 a.m.)</p> <p>6 THE VIDEOGRAPHER: We are now on the record.</p> <p>7 The time is 11:04 a.m.</p> <p>8 BY MS. ADENDORFF:</p> <p>9 Q. We spoke earlier about how individual stores</p> <p>10 would place orders with the warehouse for a product, but</p> <p>11 you mentioned that for shell eggs the products are</p> <p>12 delivered directly to the stores. How are orders placed</p> <p>13 for each store's needs for shell eggs?</p> <p>14 A. What time frame?</p> <p>15 Q. When you were category manager.</p> <p>16 A. The egg -- the delivery person made the order.</p> <p>17 Q. By "delivery person", who do you mean?</p> <p>18 A. The route person.</p> <p>19 Q. The person for the egg supplier?</p> <p>20 A. Yes.</p> <p>21 Q. And who would he be speaking with at Publix</p> <p>22 about that order?</p> <p>23 A. I don't know. I don't know if they needed to</p> <p>24 speak to anybody. The system changed while I -- during</p> <p>25 my time there. There were -- Publix personnel would</p>	<p style="text-align: right;">96</p> <p>1 spoke over you. I'll be good about that. Cost to</p> <p>2 Publix.</p> <p>3 A. The buyer manages that process. I don't know</p> <p>4 specifically what day it is.</p> <p>5 Q. Are shell eggs delivered to stores weekly?</p> <p>6 A. Depends.</p> <p>7 Q. It depends? It might be delivered more</p> <p>8 frequently or less frequently?</p> <p>9 A. More.</p> <p>10 Q. So we discussed earlier that for Publix brand</p> <p>11 shell eggs Publix has a set formula involving the Urner</p> <p>12 Barry index that it pays for those eggs; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And the Urner Barry fluctuates over time; is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. And so would Publix -- do you know if Publix</p> <p>18 for each delivery of eggs would pay a certain price</p> <p>19 based on the Urner Barry rate for that day?</p> <p>20 A. My recollection is the Urner Barry changed once</p> <p>21 a week. Therefore, the cost changed once a week. I</p> <p>22 just don't remember which exact day. So whatever day</p> <p>23 that was, the buyer processed all of that cost</p> <p>24 information. Then it would change on a specific day of</p> <p>25 the week. The cost would change. So the delivery</p>
<p style="text-align: right;">95</p> <p>1 actually order the eggs.</p> <p>2 Q. Personnel in each store?</p> <p>3 A. Yeah.</p> <p>4 Q. And, presumably, customers might buy some eggs</p> <p>5 more than other eggs, certain brands or types of eggs,</p> <p>6 and would your group take into account that demand for</p> <p>7 certain brands or types of eggs when you selected your</p> <p>8 suppliers?</p> <p>9 A. Yes. That's consumer demand.</p> <p>10 Q. And would you have certain reports on that, or</p> <p>11 how would you take that into account during the category</p> <p>12 review process?</p> <p>13 A. They would have reports.</p> <p>14 Q. Do you remember any particular instances where</p> <p>15 you looked at demand for eggs or egg products, liquid</p> <p>16 eggs?</p> <p>17 A. I don't remember a particular instance, no.</p> <p>18 Q. When is the price that Publix pays for each</p> <p>19 delivery of eggs set?</p> <p>20 A. Repeat the question, please.</p> <p>21 Q. When is the price that Publix pays for each</p> <p>22 delivery of eggs set?</p> <p>23 A. Are you talking about the price on the shelf,</p> <p>24 or are you talking about the cost from the suppliers?</p> <p>25 Q. The cost to Publix. Sorry. I shouldn't have</p>	<p style="text-align: right;">97</p> <p>1 before or after that would be appropriate.</p> <p>2 Q. Let's talk again about the actual formula and</p> <p>3 how it's set. You mentioned that Publix sends out</p> <p>4 requests for prices from egg suppliers as part of the</p> <p>5 supplier review or the category review process and the</p> <p>6 suppliers respond with their prices, and in the case of</p> <p>7 shell eggs, that would be a formula; correct?</p> <p>8 A. Correct.</p> <p>9 Q. So the supplier in the first instance provides</p> <p>10 the price; right?</p> <p>11 A. Right.</p> <p>12 Q. And would you negotiate that price at that</p> <p>13 point?</p> <p>14 A. Yes.</p> <p>15 Q. And did you negotiate almost every price that</p> <p>16 came in the door, or was it an infrequent occurrence?</p> <p>17 MR. GERMAINE: Objection to form.</p> <p>18 Q. For eggs.</p> <p>19 A. The question was in the review, once the price</p> <p>20 is negotiated, the formula is negotiated, but then you</p> <p>21 confused me with the second part of the question about</p> <p>22 negotiating every -- rephrase that to be clear.</p> <p>23 Q. You did multiple reviews for egg suppliers</p> <p>24 during the time that you were category manager; correct?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">98</p> <p>1 Q. And when the suppliers would give you their 2 prices, would you almost always push back on those 3 prices a little bit and try to negotiate them, or would 4 it be an infrequent occurrence that you would try to 5 negotiate the prices?</p> <p>6 A. On an ongoing basis like that, that was on the 7 buyers' desk. That's part of their job, so I couldn't 8 really answer that.</p> <p>9 Q. And I'm referring just to the category review 10 process. So only during the initial bidding, you would 11 negotiate at that time?</p> <p>12 A. That's always negotiated, yes.</p> <p>13 Q. Okay. And you were always negotiating those 14 prices?</p> <p>15 A. (Nodding head.)</p> <p>16 Q. Do you know what I mean when I say price taker 17 or price maker?</p> <p>18 A. No.</p> <p>19 Q. Do you know if Publix would be stuck accepting 20 the price that the egg supplier bidding initially 21 offered, or would Publix try to force that egg supplier 22 to come to its price?</p> <p>23 MR. GERMAINE: Objection to form.</p> <p>24 Q. Its own price. What price it would want to 25 pay. We talked about the target price earlier.</p>	<p style="text-align: right;">100</p> <p>1 Q. So -- so that I understand that, if you'll 2 break it down a little bit, would you observe what 3 prices those supermarkets were charging its -- their 4 retail customers?</p> <p>5 A. Yes.</p> <p>6 Q. And then you would base your pricing strategy 7 off of aiming to price similarly for your own customers; 8 is that right?</p> <p>9 A. It would be a consideration.</p> <p>10 Q. And then after taking into account that 11 information, you would work backwards to try to figure 12 out what your cost of eggs needed to be? Is that what 13 you're saying?</p> <p>14 MR. GERMAINE: Objection.</p> <p>15 Q. Explain for me a little more what pricing based 16 on competitors would look like in terms of buying the 17 eggs from the suppliers.</p> <p>18 A. Pricing is based on competitive information and 19 margin.</p> <p>20 Q. Competitive information about what they bought 21 their eggs from the suppliers for, or what they charged?</p> <p>22 A. No, what they charge, what the retail price we 23 see in their store, like you were saying. And then 24 margin would be another key component of how we would 25 price an item so it's covering our cost.</p>
<p style="text-align: right;">99</p> <p>1 MR. GERMAINE: Objection.</p> <p>2 A. I don't know.</p> <p>3 Q. You had target prices during the review 4 process; correct?</p> <p>5 MR. GERMAINE: Are you talking about private 6 label or branded eggs?</p> <p>7 Q. Private label shell eggs.</p> <p>8 A. I don't know if we had a target price for shell 9 eggs.</p> <p>10 Q. You did not have a target price?</p> <p>11 A. I said I don't know if we had one.</p> <p>12 Q. Do you know if you had a target price for egg 13 products? Liquid eggs.</p> <p>14 MR. GERMAINE: Objection to form.</p> <p>15 A. I don't recall.</p> <p>16 Q. Did you have a pricing strategy going into the 17 category reviews?</p> <p>18 MR. GERMAINE: Objection to form.</p> <p>19 A. I don't recall what the strategy was.</p> <p>20 Q. Would you have a strategy, though?</p> <p>21 A. Yes.</p> <p>22 Q. And what would that strategy be based off of?</p> <p>23 A. Be competitive.</p> <p>24 Q. Against your competitor supermarkets?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">101</p> <p>1 Q. And would Publix have certain margin goals for 2 each of its products?</p> <p>3 A. Yes.</p> <p>4 Q. And would those vary by product?</p> <p>5 A. Yes.</p> <p>6 Q. So you would take information about the 7 competitors' retail price and your own target margin for 8 that product, and from there you would work out what you 9 hoped to purchase the eggs from the suppliers from; is 10 that right?</p> <p>11 A. Yes.</p> <p>12 Q. You mentioned earlier that you recall that 13 Urner Barry changed once a week. Who received the 14 reported Urner Barry price, or who monitored that price?</p> <p>15 A. The buyer.</p> <p>16 Q. And how would they know what that price was? 17 Did they receive a report?</p> <p>18 A. I do not remember.</p> <p>19 Q. When you were category manager from 1999 to 20 2008, do you recall if egg prices increased over that 21 time, generally, decreased, or stayed the same?</p> <p>22 A. I don't remember.</p> <p>23 Q. You don't recall whether egg prices increased?</p> <p>24 A. I don't remember specifically all the prices, 25 so I can't tell you.</p>

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<p style="text-align: right;">102</p> <p>1 Q. Are eggs -- of the different products that you 2 managed in dairy, were eggs a large percentage of those 3 products? Or what percentage of the products were eggs? 4 MR. GERMAINE: Objection to form. 5 A. I don't know what percentage. 6 Q. You mentioned that you were in charge of eggs 7 and dairy and pickles and refrigerated dough and 8 different items like that; right? 9 A. (Nodding head.) 10 Q. Do you know if eggs were 25 percent of the 11 products that you were focused on? 12 MR. GERMAINE: Objection to form. 13 A. I don't remember a specific percentage. 14 Q. And you don't remember any general observations 15 about egg prices during the time that you were category 16 manager? 17 A. In general, prices increased because of lots of 18 reasons across the grocery industry. They generally 19 don't go backwards. But specifically to eggs, I don't 20 remember. 21 Q. Do you know why prices generally increased 22 across the grocery industry during that time? 23 A. No. 24 Q. Do you -- have any -- did you have any 25 conversations when you were category manager about</p>	<p style="text-align: right;">104</p> <p>1 Q. But you don't recall subscribing to Urner 2 Barry's Reporter? 3 A. No. 4 Q. Okay. Let's take a look at this first 5 paragraph on this top article here. It says: "The 6 Economic Research Service (ERS) is telling consumers to 7 plan for higher food prices this year." 8 And I should have mentioned the date of this 9 document. At the very top, it says "Spring 2008". Do 10 you see that? 11 A. Okay. 12 Q. Okay. It says: "These increases are in part 13 the result of the domino effect that many economists say 14 began with higher energy costs. Energy costs cascade 15 through the production system and affect transportation, 16 processing, and refrigeration, to name just a few areas. 17 Compounding the situation is ethanol demand. Red meat, 18 poultry, egg, and seafood products" -- "producers now 19 have a new source of buying competition for feed, which 20 is a major input cost. The higher demand for corn also 21 bolsters the price of crops that compete for the same 22 planting acreage. Consequently, the price of wheat and 23 other crops have gone up with corn." 24 Were you generally aware in the time frame that 25 you were category manager that corn prices increased?</p>
<p style="text-align: right;">103</p> <p>1 general factors or costs affecting the price of food 2 items? 3 A. I don't remember. 4 (Bates Exhibit 7 was marked for 5 identification.) 6 Q. You have in front of you Exhibit 7, which is a 7 confidential document Bates stamped UE0305604, and this 8 is a printout from something called Urner Barry's 9 Reporter. 10 Have you ever heard of Urner Barry's Reporter? 11 A. I do not remember Urner Barry Reporter. 12 Q. You did testify that you've heard of Urner 13 Barry, though; correct? 14 A. Yes, uh-huh. 15 Q. And as part of your job as category manager and 16 in your interactions with your buyers, did your team for 17 dairy monitor publications that might discuss pricing of 18 dairy items or of retail food items in general? 19 A. I don't know what publications my buyers were 20 monitoring specifically. 21 Q. Do you know if your department subscribed to 22 any magazines or industry publications that would 23 discuss the price of retail food items? 24 A. Dairy Food Magazine was one that I remember 25 that we got, but --</p>	<p style="text-align: right;">105</p> <p>1 MR. GERMAINE: Objection to form. 2 Q. Were you generally aware of increasing corn 3 prices? 4 MR. GERMAINE: Objection. 5 Q. You can answer. 6 A. Yes. 7 Q. And were you aware of increasing energy costs? 8 A. I don't remember that specifically. 9 Q. You don't recall the price of gas increasing 10 from 2000 to 2008? 11 A. I couldn't tell you what the price of gas was 12 in 2008. 13 Q. And do you recall or did you understand at the 14 time whether energy costs, feed costs, corn costs, and 15 wheat costs, four things mentioned in this article, 16 might have had any effect on the price of eggs? 17 A. Repeat the first part of that question. 18 Q. Do you recall in this time frame -- I'll break 19 it down one by one. Do you recall understanding at the 20 time that you were category manager for dairy that 21 energy costs could have an effect on the price of eggs? 22 A. The cost of energy could have the price -- 23 could affect the price of everything. 24 Q. Including eggs; correct? 25 A. Yes.</p>

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<p style="text-align: right;">106</p> <p>1 Q. So increasing energy costs would increase the 2 price of eggs? 3 A. It could. 4 Q. And would -- could corn prices -- 5 A. But I don't remember specifically. That's the 6 problem here. 7 Q. Right. And would -- could corn prices have an 8 effect on eggs that you understood? 9 A. Yes. 10 Q. And did you understand that wheat prices could? 11 A. I don't remember wheat being discussed or about 12 being a factor in the cost of eggs going up, so, no. 13 Q. What about animal feed prices? 14 A. Yes. 15 Q. You do recall that being a potential factor 16 to -- to affect the price of eggs; correct? 17 A. Yes. 18 Q. And what other factors do you recall 19 understanding had an effect on the price of eggs that 20 Publix paid while you were category manager? 21 A. You listed energy and feed. 22 Q. And corn; correct? 23 A. And corn. 24 Q. Any others? 25 A. I remember, which I said earlier, Tampa Farms</p>	<p style="text-align: right;">108</p> <p>1 A. Yes. 2 Q. And so you understood that increasing cage 3 sizes might decrease the population of birds in that 4 barn? 5 MR. GERMAINE: Objection to form. 6 A. Did not relate it to having less population. 7 Q. Did you generally understand that reducing the 8 population of hens could increase the price of eggs? 9 A. I don't recall having those thoughts. 10 Q. Did you have any conversations with suppliers 11 or any third parties about flock sizes for egg-laying 12 hens? 13 A. No. 14 Q. Did you have any conversations or were you 15 aware -- strike that. 16 Were you aware of any effect that exports of 17 eggs could have on the price of eggs domestically? 18 A. I don't remember that being -- I just don't 19 remember any conversations about eggs -- egg exports. 20 Q. So you don't recall ever discussing egg exports 21 with any suppliers of eggs? 22 A. I don't. 23 Q. Do you know other -- any other factors that 24 might affect the price of eggs besides the ones we've 25 just discussed?</p>
<p style="text-align: right;">107</p> <p>1 having conversations about animal welfare, and that 2 would potentially affect the cost of eggs. 3 Q. And did you understand that animal welfare 4 would increase or decrease the cost of eggs? 5 A. Increase. 6 Q. Did you understand or did anyone explain to you 7 why that would be? 8 A. Those conversations were based around cages, 9 the birds were caged or cage size, that type of 10 parameter, so it would be the reason why that it may 11 affect the cost of eggs. But those were just 12 conversations. I don't recall specifically what any 13 cost amount would be. 14 Q. And did you understand that increasing cage 15 size would increase costs? 16 A. I understood it would have that potential, yes. 17 Q. And why -- why did you understand that that 18 would be? 19 A. Because that's what the supplier told me. 20 Q. And who was the individual at Tampa Farms that 21 you discussed this with? 22 A. Mike Bynum. 23 Q. Did you understand that by increasing cage 24 sizes egg farmers would be able to keep less eggs in one 25 barn? I mean less hens in one barn.</p>	<p style="text-align: right;">109</p> <p>1 A. No. 2 Q. What about seasonal demand for eggs? 3 A. I recall that generally before Easter the cost 4 of eggs went up, and that would be driven on consumer 5 demand. 6 Q. So you understood that when demand was higher, 7 price would go up? 8 A. Yes. 9 Q. What about increased demand for eggs due to 10 dietary trends, for example, the high protein diets or 11 the Atkins diets? 12 MR. GERMAINE: Objection to form. 13 A. I don't know. 14 Q. You were not aware of any effect those diets 15 had on the price of eggs? 16 A. I don't recall anything like that. 17 Q. Were you aware of any diseases or viruses that 18 could affect the flock, the hen flocks, and therefore, 19 affect supply of eggs? 20 MR. GERMAINE: Objection to form. 21 A. I don't remember. 22 Q. You don't recall hearing any diseases that 23 might relate specifically to egg-laying hens? 24 A. I don't remember. 25 Q. Would your department have monitored factors</p>

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<p style="text-align: right;">110</p> <p>1 that could affect the price of eggs?</p> <p>2 A. Yes.</p> <p>3 Q. How would you monitor those factors?</p> <p>4 A. Reports, the commodity pricing of corn. We saw</p> <p>5 some of that reporting. That was -- came from our MSP</p> <p>6 department, as I recall. The buyer would have reviewed</p> <p>7 some of that information. That's --</p> <p>8 Q. So the MSP department within Publix would draft</p> <p>9 reports on commodity prices?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 A. I don't know who drafted it.</p> <p>12 Q. You understood those reports coming from --</p> <p>13 from the MSP department, though?</p> <p>14 A. Yes.</p> <p>15 Q. And those were not third party or external</p> <p>16 reports?</p> <p>17 A. I don't know.</p> <p>18 Q. And the buyer would receive these reports?</p> <p>19 A. Yes.</p> <p>20 Q. And would the buyer ever report to you on any</p> <p>21 developments that it saw in these reports he saw/she</p> <p>22 saw?</p> <p>23 A. Yes.</p> <p>24 Q. How often would that occur?</p> <p>25 A. I don't remember. As needed.</p>	<p style="text-align: right;">112</p> <p>1 A. Any issues they might be having in their job</p> <p>2 functions that they needed guidance on.</p> <p>3 Q. And would that include managing difficult</p> <p>4 relationships with suppliers?</p> <p>5 A. It could, yes.</p> <p>6 Q. Would it include problems they were having with</p> <p>7 pricing?</p> <p>8 A. Yes.</p> <p>9 Q. What else might it include?</p> <p>10 A. Promotion.</p> <p>11 Q. Promotions, pricing, issues with suppliers.</p> <p>12 Anything else?</p> <p>13 A. Not that I can think of.</p> <p>14 Q. You testified earlier that the formula that</p> <p>15 Publix pays for its Publix store brand shell eggs is</p> <p>16 based off of Urner Barry; correct?</p> <p>17 A. Right.</p> <p>18 Q. And does Publix pay a discount off of Urner</p> <p>19 Barry?</p> <p>20 MR. GERMAINE: Objection.</p> <p>21 A. I don't -- I don't remember.</p> <p>22 Q. So you don't recall whether the formula would</p> <p>23 be subtracting from Urner Barry or adding to Urner</p> <p>24 Barry?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">111</p> <p>1 Q. As needed? Would that happen more than once a</p> <p>2 year?</p> <p>3 A. I don't know.</p> <p>4 Q. Would you ever have department meetings when</p> <p>5 you were in the dairy department?</p> <p>6 A. Yes.</p> <p>7 Q. And how often were those meetings?</p> <p>8 A. Weekly.</p> <p>9 Q. And who would be at those dairy meetings?</p> <p>10 A. My two buyers and myself.</p> <p>11 Q. Would the business development director -- is</p> <p>12 that the right title?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Would that person attend?</p> <p>15 A. No.</p> <p>16 Q. And what would you discuss at those meetings?</p> <p>17 A. Information that I had received from my boss in</p> <p>18 a weekly meeting. Just a myriad of different</p> <p>19 communications that involve the department, and</p> <p>20 procedures.</p> <p>21 Q. Would buyers report to you, report things to</p> <p>22 you, or would it be only you reporting things to them?</p> <p>23 A. They would report things to me also.</p> <p>24 Q. And what kinds of topics would they report to</p> <p>25 you?</p>	<p style="text-align: right;">113</p> <p>1 Q. And you mentioned that that formula was set in</p> <p>2 the bidding process where you were selecting the</p> <p>3 supplier, and you said, I believe this morning, that you</p> <p>4 said that that bid would be for a price formula that</p> <p>5 would last for one year; correct?</p> <p>6 A. I did say that.</p> <p>7 Q. And that's for shell eggs?</p> <p>8 A. So to clarify that a little bit, the one year</p> <p>9 is on a price when you're on a formula price. Maybe I</p> <p>10 didn't speak clearly. The formula price would be</p> <p>11 until -- it would be ongoing. There wouldn't be a</p> <p>12 one-year limit to a formula price, because it changes.</p> <p>13 A set price was what we would put the year.</p> <p>14 Q. So when might that price change, pricing</p> <p>15 formula change?</p> <p>16 A. It depends on the parameter in the formula. So</p> <p>17 if it was based off the Urner Barry, and the Urner Barry</p> <p>18 changes weekly, the price can change weekly.</p> <p>19 Q. When would the actual formula change, though,</p> <p>20 besides the Urner Barry component?</p> <p>21 A. There's no determined time.</p> <p>22 Q. When the price -- did the price ever change</p> <p>23 during the time you were category manager? The formula.</p> <p>24 A. I don't recall.</p> <p>25 Q. Do you recall that it did not change?</p>

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<p style="text-align: right;">114</p> <p>1 A. No.</p> <p>2 Q. If it changed, what would have caused that</p> <p>3 change? Would it be the supplier calling you to make</p> <p>4 the change?</p> <p>5 MR. GERMAINE: Objection to form. Calls for</p> <p>6 speculation.</p> <p>7 A. The supplier --</p> <p>8 Q. You can answer.</p> <p>9 A. The supplier would have to contact the buyer.</p> <p>10 That would be something they would cover in a meeting.</p> <p>11 Q. So at these weekly meetings the buyer might</p> <p>12 raise that a supplier contacted them and wanted to</p> <p>13 change the pricing formula?</p> <p>14 MR. GERMAINE: Objection.</p> <p>15 A. Yes.</p> <p>16 Q. With respect to eggs, do you recall any</p> <p>17 specific changes to the formula during the time that you</p> <p>18 were category manager?</p> <p>19 MR. GERMAINE: Objection. Asked and answered.</p> <p>20 A. I don't remember.</p> <p>21 Q. What would the reasons be that a supplier would</p> <p>22 change the formula for eggs?</p> <p>23 MR. GERMAINE: Objection to form.</p> <p>24 A. I can't answer for the supplier.</p> <p>25 Q. Would the supplier provide reasons to the buyer</p>	<p style="text-align: right;">116</p> <p>1 A. Correct.</p> <p>2 Q. Do you recall any instance in which an egg</p> <p>3 supplier provided a reason why the price would have</p> <p>4 changed for egg products?</p> <p>5 A. I do not remember a specific instance.</p> <p>6 Q. If a supplier called and asked to change the</p> <p>7 pricing formula or the set price for your egg products</p> <p>8 or shell eggs, any egg products, would Publix push back</p> <p>9 on that price increase?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 A. Yes. Yes, we would.</p> <p>12 Q. And a period of negotiation would ensue?</p> <p>13 MR. GERMAINE: Objection.</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall ever changing suppliers due</p> <p>16 to increasing price for eggs?</p> <p>17 A. I don't recall.</p> <p>18 Q. Is it a certain employee at Publix's</p> <p>19 responsibility to keep costs as low as possible for egg</p> <p>20 purchases?</p> <p>21 A. The buyer.</p> <p>22 Q. And when you had these formulas or egg prices</p> <p>23 that you received through the bidding process, did you</p> <p>24 enter into a formal supply contract with your egg</p> <p>25 suppliers?</p>
<p style="text-align: right;">115</p> <p>1 when they were asking to change the formula?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall any reasons that egg producers</p> <p>4 gave for wanting to change the pricing formula?</p> <p>5 A. No, I don't.</p> <p>6 Q. For egg products, liquid eggs, you mentioned,</p> <p>7 if I'm correct, that the price was a set price, it was</p> <p>8 not a formula-based price; is that correct?</p> <p>9 A. That is my recollection.</p> <p>10 Q. And how often would a set price change?</p> <p>11 A. There's no determined time.</p> <p>12 Q. In your experience, how often did the price of</p> <p>13 liquid eggs or egg products change?</p> <p>14 A. I don't remember.</p> <p>15 Q. Would it be more than once a year?</p> <p>16 A. I don't remember.</p> <p>17 Q. Do you recall if egg products were -- had the</p> <p>18 same exact price the entire time you were category</p> <p>19 manager?</p> <p>20 A. No, they did not.</p> <p>21 Q. So they must have changed while you were</p> <p>22 category manager?</p> <p>23 A. Yes.</p> <p>24 Q. But you don't recall the frequency of those</p> <p>25 changes?</p>	<p style="text-align: right;">117</p> <p>1 A. I do not remember.</p> <p>2 Q. Did you in general when you were purchasing</p> <p>3 products for the dairy department have supply agreements</p> <p>4 from time to time with some of your suppliers?</p> <p>5 MR. GERMAINE: Objection to form.</p> <p>6 A. What do you mean by "agreement"?</p> <p>7 Q. A written contract between you and the</p> <p>8 supplier.</p> <p>9 A. I don't -- I did not sign any contract.</p> <p>10 Q. How did Publix set the terms for its</p> <p>11 relationships with its suppliers?</p> <p>12 A. How did Publix do what?</p> <p>13 Q. Set the terms for its relationships with its</p> <p>14 suppliers.</p> <p>15 A. Terms of agreement?</p> <p>16 Q. Terms of delivery, terms of who was going to</p> <p>17 provide packaging, pricing, audit requirements that we</p> <p>18 discussed earlier. Where would all those terms be</p> <p>19 memorialized?</p> <p>20 A. For the shell egg suppliers, that information</p> <p>21 was given to the suppliers by MSP in that process. And</p> <p>22 the buyer also, if it wasn't MSP giving it to them, it</p> <p>23 was just part of their job function that suppliers are</p> <p>24 aware of all those terms and how to do business with</p> <p>25 Publix.</p>

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<p style="text-align: right;">118</p> <p>1 Q. So the terms of the business relationship were 2 set during the supplier selection process that we 3 described earlier?</p> <p>4 A. Yes.</p> <p>5 Q. Were the terms of those relationships ever 6 changed outside of that process, just sort of in the 7 course of business something would come up and a term 8 would change?</p> <p>9 A. I don't remember any example of that.</p> <p>10 Q. With respect to eggs, or generally?</p> <p>11 A. Generally and with respect to eggs.</p> <p>12 Q. When Publix receives costs from its -- or 13 prices from its egg suppliers, do those prices include 14 taxes?</p> <p>15 A. I don't know.</p> <p>16 Q. You never saw a separate breakout for taxes for 17 the orders for eggs?</p> <p>18 A. I -- I do not remember seeing that, no.</p> <p>19 Q. Is Publix -- earlier we discussed qualities or 20 factors that Publix considers when selecting its egg 21 supplier. Is it correct to summarize your testimony 22 that Publix does not always choose the lowest cost 23 supplier?</p> <p>24 MR. GERMAINE: Objection to form.</p> <p>25 A. We do not always choose the lowest cost</p>	<p style="text-align: right;">120</p> <p>1 Quotation, then fully describe each such agreement, 2 identifying the purchases to which each was applicable."</p> <p>3 And then if you skip to the bottom of the page, 4 you'll see it says: "Plaintiff states that, in most 5 instances, to the best of its knowledge, the price of 6 eggs and egg products it purchased from defendants was 7 based in whole or in part on an Urner Barry Price 8 Quotation. However, Plaintiff further states that not 9 all Urner Barry Price Quotations were the same for all 10 of Plaintiff's purchases of eggs or egg products over 11 the relevant time period. Urner Barry Price Quotations 12 can differ over time and by geographic location, among 13 other factors."</p> <p>14 In general, is that response correct, to the 15 best of your knowledge?</p> <p>16 MR. GERMAINE: Objection to form.</p> <p>17 Q. Is that response correct?</p> <p>18 MR. GERMAINE: Objection to form.</p> <p>19 Q. You can answer.</p> <p>20 A. Let me read it.</p> <p>21 MR. GERMAINE: You should feel free to read the 22 whole document if you need to.</p> <p>23 A. I don't know.</p> <p>24 Q. On the last sentence there, it says: "Urner 25 Barry Price Quotations can differ over time and by</p>
<p style="text-align: right;">119</p> <p>1 provider.</p> <p>2 Q. And that's because Publix wants to provide 3 quality goods to its consumers; correct?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 A. It's because cost is only one factor of the -- 6 of the decision.</p> <p>7 Q. And quality is another factor; correct?</p> <p>8 A. It is.</p> <p>9 Q. And is that because Publix wants to ensure that 10 its grocery store customers receive a quality product?</p> <p>11 A. It is.</p> <p>12 Q. Because that reflects on the Publix brand?</p> <p>13 A. Yes.</p> <p>14 (Bates Exhibit 8 was marked for 15 identification.)</p> <p>16 Q. You have in front of you what's been marked as 17 Exhibit 8, and this is Publix's answers to what are 18 called interrogatories, certain questions that are asked 19 in the course of litigation. And I represent to you 20 that this is Publix's answers.</p> <p>21 And if you flip to page 4, you'll see that the 22 question asks: "If during the period covered by your 23 complaint you made purchases of products where you 24 expressly agreed that the prices would be determined, in 25 whole or in part, on the basis of an Urner Barry Price</p>	<p style="text-align: right;">121</p> <p>1 geographic location, among other factors."</p> <p>2 Does that refresh your recollection of whether 3 the Urner Barry quote varies over geography?</p> <p>4 A. No, because I honestly do not remember.</p> <p>5 Q. Turning to your second -- the answer to the 6 second interrogatory, which is on page 7, if you can 7 look at the first full paragraph, it says: "Plaintiffs 8 states that, in most instances, to the best of its 9 knowledge, the prices of eggs and eggs products it 10 purchased from Defendants were based in whole or in part 11 on an Urner Barry Price Quotation. However, Plaintiff's 12 grocery business unit purchased national brand eggs and 13 egg products and specialty eggs based on a fixed vendor 14 price list. The prices of these eggs/egg products were 15 not, unlike Publix brand eggs and egg products, 16 explicitly based on the prevailing Urner Barry Price 17 Quotation for the subject product and region."</p> <p>18 Is that correct?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. I don't know.</p> <p>21 Q. You testified earlier that the branded eggs 22 that you purchased for Publix were purchased on a fixed 23 price; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the Publix brand eggs were purchased off of</p>

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<p style="text-align: right;">122</p> <p>1 Urner Barry?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. We discussed earlier that people in your</p> <p>4 department might monitor factors that could affect the</p> <p>5 price of eggs; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Did Publix do any forecasting of egg prices?</p> <p>8 A. To my knowledge, I don't remember that.</p> <p>9 Q. Did Publix ever consider switching from Urner</p> <p>10 Barry formula-based pricing to other forms of pricing</p> <p>11 for its shell eggs?</p> <p>12 A. I'm not aware of that.</p> <p>13 Q. Are you aware that other than Urner Barry there</p> <p>14 are other commodities that you could price your egg</p> <p>15 formula off of? Let me reformulate that question.</p> <p>16 Other than Urner Barry, are there other indexes</p> <p>17 that you could use to set the price of eggs in a</p> <p>18 formula?</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware of grain-based pricing for eggs?</p> <p>21 A. Not specifically.</p> <p>22 Q. Did you ever discuss any alternative pricing</p> <p>23 methods with your egg suppliers?</p> <p>24 A. In a general conversation, may have discussed</p> <p>25 other methods, but we never asked for one. Never</p>	<p style="text-align: right;">124</p> <p>1 A. Right.</p> <p>2 (Bates Exhibit 9 was marked for</p> <p>3 identification.)</p> <p>4 Q. You have in front of you Exhibit 9, which is a</p> <p>5 highly confidential document Bates stamped</p> <p>6 PUB_EGGS_015630.</p> <p>7 And looking at the top, this appears to be an</p> <p>8 e-mail exchange between Jeff Cutler, apparently of</p> <p>9 Golden Oval Eggs, and Mark Dobersch and Ivonne Leon</p> <p>10 regarding liquid whole egg in 2007.</p> <p>11 Do you recognize the name Mark Dobersch?</p> <p>12 A. Yes.</p> <p>13 Q. And who is Mark Dobersch?</p> <p>14 A. He works in the MSP department.</p> <p>15 Q. And do you recognize Ivonne Leon?</p> <p>16 A. No, I do not.</p> <p>17 Q. And do you know Jeff Cutler?</p> <p>18 A. No, I do not.</p> <p>19 Q. Have you ever heard of Golden Oval Eggs?</p> <p>20 A. No.</p> <p>21 Q. And, to your knowledge, did Publix retail</p> <p>22 grocery department ever purchase eggs from Golden Oval</p> <p>23 Eggs?</p> <p>24 A. I do not remember us purchasing anything from</p> <p>25 Golden Oval Eggs.</p>
<p style="text-align: right;">123</p> <p>1 pursued one, to my knowledge.</p> <p>2 Q. Why did Publix not pursue alternative pricing</p> <p>3 methods?</p> <p>4 A. Because we did not want to be noncompetitive in</p> <p>5 our pricing to the customer, because it was our</p> <p>6 understanding that our competition prices were based off</p> <p>7 of Urner Barry, assumed that, and so if we were to go to</p> <p>8 another pricing method, we were afraid we would have --</p> <p>9 our costs would be at times higher, and then we would --</p> <p>10 cause us to be uncompetitive.</p> <p>11 Q. And you testified that the number for Urner</p> <p>12 Barry could change week to week; right?</p> <p>13 A. Right.</p> <p>14 Q. So that would cause volatility in your costs of</p> <p>15 eggs; right?</p> <p>16 A. Right.</p> <p>17 Q. Did you ever consider switching to a flat</p> <p>18 price, like you used for egg products, on shell eggs so</p> <p>19 that you would have less volatility in your cost for</p> <p>20 eggs?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. The reason I just stated in the last question.</p> <p>24 Q. Because you understood that your competitors</p> <p>25 were basing their shell egg prices off of Urner Barry?</p>	<p style="text-align: right;">125</p> <p>1 Q. If you look at the second e-mail down, the one</p> <p>2 from Mark Dobersch -- from Mark Dobersch -- it says:</p> <p>3 "Jeff, we simply cannot take this big of a hit. My</p> <p>4 question is" -- "my question to you is are you willing</p> <p>5 to keep this out there as it may cost you the business?"</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And then below that, it says: "Ivonne, please</p> <p>9 find that attached form with explanation of price</p> <p>10 increase on the item that we currently supply to both</p> <p>11 the Lakeland and Atlanta facilities."</p> <p>12 So in this e-mail exchange, it appears that</p> <p>13 Jeff Cutler has sent Mark Dobersch and others a price</p> <p>14 increase, and then Mark Dobersch responds and says: "We</p> <p>15 cannot take this big of a hit. It may cost you the</p> <p>16 business."</p> <p>17 When you testified that you negotiated with</p> <p>18 suppliers, would this be the kind of strategy that you</p> <p>19 would use in terms of, if the supplier presented to you</p> <p>20 a price increase, would you let them know if it was</p> <p>21 unacceptable?</p> <p>22 MR. GERMAINE: Objection to form.</p> <p>23 A. We ask for justification of a price increase.</p> <p>24 Q. And at times would you decide those certain</p> <p>25 price increases were unacceptable?</p>

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<p style="text-align: right;">126</p> <p>1 A. I'm trying to think of an instance. That's 2 negotiation back and forth. 3 Q. And during negotiations, did you ever inform 4 your suppliers that you could drop them as a supplier if 5 they did not lower the price increase? 6 MR. GERMAINE: Objection to form. 7 A. I don't recall an instance doing that. 8 Q. Did Publix have the ability to drop a supplier 9 if it increased the price too much? 10 MR. GERMAINE: Objection to form. 11 A. The decision -- the question doesn't make sense 12 to me, because when we go through a supplier review, 13 that's exactly what it is, is choosing a supplier. So 14 that is the ability to choose our supplier, so... 15 Q. But you also testified that the price a 16 supplier charges might change in between category 17 reviews; correct? 18 A. Uh-huh. 19 Q. And they might call -- you testified that a 20 supplier could call the egg buyer and inform them of a 21 price increase; correct? 22 A. Uh-huh. 23 Q. And then you testified that you might negotiate 24 at that point on that price increase? 25 A. Right.</p>	<p style="text-align: right;">128</p> <p>1 Smith. 2 Q. Do you have any reason to doubt that Chris 3 Smith works at Publix? 4 MR. GERMAINE: Objection to form. 5 A. I do, because I don't remember Chris Smith. 6 Q. Would someone with the e-mail address 7 @imc.publix.com work for Publix? 8 MR. GERMAINE: Objection to form. Lacks 9 foundation. 10 A. I don't know what "imc" is. It's not the way 11 my e-mail address reads. 12 Q. What's your e-mail address? 13 A. Greg.bates@Publix.com. 14 Q. And if you look at the second e-mail there, it 15 says: "Chris, it was good talking with you this 16 morning. As discussed, we would like to offer Publix 17 flat pricing for the liquid whole egg that we currently 18 supply." 19 And what is flat pricing? 20 MR. GERMAINE: Objection to form. 21 A. I don't know in the context of this e-mail what 22 their definition is. 23 Q. You mentioned that there's two forms of pricing 24 for eggs; correct? There's formula-based and fixed 25 price. Would flat pricing be another word for fixed</p>
<p style="text-align: right;">127</p> <p>1 Q. So during those negotiations, did you ever tell 2 a supplier, "We might just change suppliers if you don't 3 lower your price increase." 4 MR. GERMAINE: Objection to form. Asked and 5 answered. 6 A. What would happen from my chair as category 7 manager was I would request a review so we could go 8 through a supplier review. 9 Q. So you would consider changing suppliers if the 10 price increased? 11 A. I could. That would be my option. That's how 12 I would handle it. 13 (Bates Exhibit 10 was marked for 14 identification.) 15 Q. You have in front of you Exhibit 10, a highly 16 confidential document Bates stamped PUB_EGGS_016558. 17 And this is an e-mail from Chris Smith to Jeff Cutler. 18 Do you know who Chris Smith is? 19 A. No, I don't remember that name. 20 Q. Do you see in the second e-mail there that it 21 says chris.smith@imc.publix.com is the "to" recipient? 22 A. Yes, I see it. 23 Q. Does that refresh your recollection of whether 24 Chris Smith worked for Publix? 25 A. It does not. I just don't remember Chris</p>	<p style="text-align: right;">129</p> <p>1 pricing? 2 A. That would be my understanding of it, but I am 3 not familiar with this. They could have a different 4 definition. 5 Q. In the top e-mail, it says: "Chris" -- I'm 6 sorry. "Jeff, we've been discussing this on our side 7 and are a little hesitant to agree to a flat price for 8 such a long period of time. What are your thoughts on a 9 year time frame?" 10 So in that e-mail, it appears that Chris Smith 11 is saying a price -- a flat price for liquid eggs for 12 longer than a one-year time frame made Chris and others, 13 unspecified others, uncomfortable. 14 Why would Publix consider a one-year time frame 15 for a flat price for liquid eggs to be too long, or more 16 than a one-year time frame? 17 MR. GERMAINE: Objection to form. 18 A. I do not know why they made that decision or 19 statement. 20 Q. Did you have flat prices for more than a year 21 in the retail department for egg products? 22 A. I don't remember. 23 Q. If -- if Publix expected that egg prices were 24 going to increase, would Publix want to lock in a fixed 25 lower price?</p>

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<p style="text-align: right;">130</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 A. It depends. There's risk in the situation</p> <p>3 either way.</p> <p>4 Q. Can you explain to me how Publix would look at</p> <p>5 that risk?</p> <p>6 MR. GERMAINE: Objection to form.</p> <p>7 A. Knowledge of the category and the factors.</p> <p>8 Locking in a price can be good for you, as you</p> <p>9 expressed, but if they go down, it's bad for you. So</p> <p>10 that's the risk.</p> <p>11 Q. So you might not want to lock in a long-term</p> <p>12 price if you expect the prices are going to fall?</p> <p>13 MR. GERMAINE: Objection to form.</p> <p>14 A. Correct.</p> <p>15 Q. Is that right?</p> <p>16 A. It's not a cut and dried thing. Like I said,</p> <p>17 it depends on the -- on the folks making the decision</p> <p>18 for the item at that time.</p> <p>19 Q. And it depends on --</p> <p>20 A. So there's no set rule.</p> <p>21 Q. It depends on what those folks predict would</p> <p>22 happen with prices; correct?</p> <p>23 MR. GERMAINE: Objection.</p> <p>24 A. I can't speak for these folks.</p> <p>25 Q. In your purchases of eggs, what -- what would</p>	<p style="text-align: right;">132</p> <p>1 the type that you were referring to?</p> <p>2 A. It does.</p> <p>3 Q. And it seems from this questionnaire that these</p> <p>4 are Cal-Maine's answers, Cal-Maine Foods' answers, to</p> <p>5 your questionnaire?</p> <p>6 A. Yes.</p> <p>7 Q. Looking at No. 2, you see listed underneath</p> <p>8 that question certain types of eggs, for example, medium</p> <p>9 eggs, 12-count; large eggs, 6-count; large eggs,</p> <p>10 12-count carton. Were those the different types of</p> <p>11 shell eggs that you purchased as -- for Publix's brand?</p> <p>12 A. Yes.</p> <p>13 Q. Turning -- go ahead. Turning to Question No.</p> <p>14 30 on page 3, do you see that it says: "What other</p> <p>15 pricing systems do you offer shell egg customers (cost</p> <p>16 plus, etc.)?"</p> <p>17 And then Cal-Maine answers: "We could discuss</p> <p>18 a cost plus or sliding scale (greater discount when</p> <p>19 market is higher) as discussed at next meeting." Or,</p> <p>20 sorry. "Discussed at meeting."</p> <p>21 Why would Publix include a question about</p> <p>22 alternative pricing systems on its questionnaire?</p> <p>23 A. It's just another point of information.</p> <p>24 Q. Did Publix ever consider changing to any other</p> <p>25 alternative pricing metrics for its shell eggs?</p>
<p style="text-align: right;">131</p> <p>1 affect your decision to lock in a price for a longer</p> <p>2 period of time?</p> <p>3 A. What our expectation of the pricing would be,</p> <p>4 whether it would go up or down, would be a factor in</p> <p>5 that decision.</p> <p>6 (Bates Exhibit 11 was marked for</p> <p>7 identification.)</p> <p>8 Q. You have in front of you Exhibit 11, which is a</p> <p>9 highly confidential document, PUB_EGGS_006960, and at</p> <p>10 the top it says Publix Super Markets, Inc. Qualifying</p> <p>11 Questionnaire Publix Brand Eggs.</p> <p>12 Do you recognize this document?</p> <p>13 A. I don't remember it. It's been a long time.</p> <p>14 Q. Do you recognize this form generally?</p> <p>15 A. Wow. It's been a long time. I don't recognize</p> <p>16 this -- it was -- the form has changed from what we use</p> <p>17 now. It looks --</p> <p>18 Q. You testified earlier that when selecting</p> <p>19 suppliers for Publix brand eggs you would send out a</p> <p>20 questionnaire; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And that you would have input in the questions</p> <p>23 on that questionnaire?</p> <p>24 A. Yes.</p> <p>25 Q. And does this appear to be a questionnaire of</p>	<p style="text-align: right;">133</p> <p>1 A. I answered that question already.</p> <p>2 Q. What was your answer? Yes?</p> <p>3 A. My answer was, no, we didn't pursue it because</p> <p>4 of the -- the risk of competitiveness.</p> <p>5 Q. And in Cal-Maine's response, it says: "A</p> <p>6 sliding scale," and then parentheses, "greater discount</p> <p>7 when market is higher."</p> <p>8 Do you know if Publix ever had a greater</p> <p>9 discount in its egg formula when the market price or the</p> <p>10 Urner Barry price for eggs was higher?</p> <p>11 A. I do not recall.</p> <p>12 Q. Do you recall any other factors that might have</p> <p>13 changed the formula discount that Publix paid for eggs,</p> <p>14 including paying on time or certain early payments for</p> <p>15 deliveries?</p> <p>16 A. No, I do not recall.</p> <p>17 Q. Formulas never incorporated payment terms?</p> <p>18 A. I don't -- I don't know.</p> <p>19 Q. You don't recall?</p> <p>20 A. Yeah, I don't recall.</p> <p>21 Q. I think we're going to come back to this</p> <p>22 exhibit, so you might want to just set it aside</p> <p>23 specially.</p> <p>24 A. Okay.</p> <p>25 Q. In the next step of the process after you have</p>

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<p style="text-align: right;">134</p> <p>1 purchased the eggs and they've been delivered to your 2 Publix stores, you mentioned earlier, I believe, that 3 the buyer sets the price that Publix charges for its 4 eggs to its retail customers; correct?</p> <p>5 A. Correct.</p> <p>6 Q. Who has input on that price?</p> <p>7 A. The category manager has input.</p> <p>8 Q. So the category manager, the buyer. Does the 9 business development director get involved in the 10 setting of the price?</p> <p>11 A. Generally, no.</p> <p>12 Q. And can you describe to me how that process 13 works? How does the buyer come up with the price?</p> <p>14 A. There's a pricing system.</p> <p>15 Q. Is that a computer system?</p> <p>16 A. Yes.</p> <p>17 Q. And is it the same pricing system for all the 18 different dairy products?</p> <p>19 A. Yes.</p> <p>20 Q. And what are the -- walk me through that 21 system. What are the inputs to that system?</p> <p>22 MR. GERMAINE: Objection to form.</p> <p>23 A. This is confidential information.</p> <p>24 Q. We are -- we can designate it as highly 25 confidential.</p>	<p style="text-align: right;">136</p> <p>1 different areas, but those areas vary widely. Some of 2 them are a large group, a large area. Some of them are 3 small areas.</p> <p>4 Q. And just so I have a sense of the scale you're 5 talking about, would a large area be a state, for 6 example?</p> <p>7 A. No, not that large.</p> <p>8 Q. Not that large. So a region of a state?</p> <p>9 A. (Nodding head.)</p> <p>10 Q. And a small area would be maybe a specific 11 large city; is that right? Just give a verbal response.</p> <p>12 A. Yes.</p> <p>13 Q. And for prices -- so you just talked about 14 getting competitors' prices on -- in these specific 15 zones. Would Publix also set its price differently in 16 different regions or different store areas?</p> <p>17 A. Yes.</p> <p>18 Q. When Publix sets a price for eggs, how many 19 stores does that price apply to?</p> <p>20 MR. GERMAINE: Objection to form.</p> <p>21 A. We have a price tag in every single store of 22 the company, so I'm not sure where -- what you're 23 asking.</p> <p>24 Q. And would the prices -- the price tags in every 25 single store be the same for eggs?</p>
<p style="text-align: right;">135</p> <p>1 A. The cost and margin, and expected margin, 2 which, as you stated -- the cost would be the cost from 3 the supplier. Okay. So then there's a margin 4 expectation, which does vary by product type, and then 5 there's competitive price information in there about 6 what we see at other retailers. That is -- those are 7 the factors that go into consideration of how we sell at 8 retail.</p> <p>9 Q. And for competitive price information, is it 10 the buyers' responsibility to gather that information?</p> <p>11 A. No, it is gathered by a third party.</p> <p>12 Q. And is that competitive price information for 13 certain locations, or is there some sort of average 14 across the country?</p> <p>15 A. Certain locations.</p> <p>16 Q. And how small of a region would that location 17 be? Would it be a city or a state?</p> <p>18 A. It is specific locations that cover all of our 19 market area, so it's just in the -- where we have 20 stores.</p> <p>21 Q. And does the price vary that you receive on a 22 city basis even within those regions? How is it broken 23 down?</p> <p>24 A. Now you're getting granular. I do not know -- 25 it's we have price zones, so it's by zone, which is in</p>	<p style="text-align: right;">137</p> <p>1 A. No.</p> <p>2 Q. And if you take a certain store's price, say 3 here in Lakeland, would all the stores in Lakeland have 4 the same price tag?</p> <p>5 A. Not necessarily, because the zone doesn't -- 6 may split part of a city. The zone is an area. It 7 doesn't have to be by city or county. So --</p> <p>8 Q. So the zones that you consider for your 9 competitors' price information, are those the same zone 10 areas that you use for setting Publix's own prices of 11 eggs?</p> <p>12 A. Yes.</p> <p>13 Q. So when you set a price, a specific price for 14 eggs, it's specific to a certain zone?</p> <p>15 A. Yes.</p> <p>16 Q. And those zones could be anywhere from the size 17 of a city to a portion of a state?</p> <p>18 A. It can be smaller than the size of a city to 19 the size of, yeah, a state, that's correct.</p> <p>20 Q. And you mentioned the pricing system is a 21 computer program. Who sets the formula that the 22 computer program uses to output the price that you 23 ultimately charge?</p> <p>24 A. Who sets the what?</p> <p>25 Q. The formula. So if you input these different</p>

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<p style="text-align: right;">138</p> <p>1 factors that you mentioned, the cost from the supplier, 2 the margin expectation, and the competitive price 3 information, who designed the system? Who actually set 4 up the formula that outputs the price Publix ultimately 5 charges its consumers? 6 A. I don't know. 7 Q. Do you know if it was done by a third party? 8 A. It was, to my knowledge, not done by a third 9 party. 10 Q. Internally to Publix? 11 A. Yes. 12 Q. But you did not have any input in that? 13 A. I do not set that strategy or program. 14 Q. What is Publix's strategy for retail pricing of 15 eggs? 16 A. To be competitive. 17 Q. And was Publix always looking to be the lowest 18 cost supplier in the market? 19 A. No. 20 Q. So how did Publix define being competitive with 21 respect to eggs? 22 A. Being within a certain percentage -- 23 Q. And do you remember what range -- 24 A. -- from the competitive price. 25 It would vary by zone and competitor.</p>	<p style="text-align: right;">140</p> <p>1 MR. GERMAINE: Objection to form. Calls for 2 speculation. 3 Q. You can answer. 4 A. I don't want to speculate, I want to give you 5 the truth, so I can't give you a specific number. I 6 can't remember it. 7 Q. In your job as category manager, you supervised 8 the pricing strategy for eggs; correct? 9 A. Uh-huh. 10 Q. So you were familiar with the margin that 11 Publix received on its eggs? 12 A. (Nodding head.) 13 Q. So in that experience, on average, could you 14 give me a sense of what the margin might be? Was it in 15 the range of 300 percent, 3 percent? What are -- what 16 are the margins on eggs for Publix -- 17 MR. GERMAINE: Objection to form. 18 Q. -- on average? 19 You can answer. 20 MR. GERMAINE: If you know. 21 A. I don't know what the specific number is. 22 Q. Who would know other than you? 23 A. The buyer. 24 Q. And the buyer would have talked about that with 25 you; right?</p>
<p style="text-align: right;">139</p> <p>1 Q. And competitor? 2 A. Well, same difference. Vary by zone. 3 Q. So if a competitor raised prices, would Publix 4 be able to raise prices as well? 5 MR. GERMAINE: Objection to form. 6 A. Depends, because the competitor price is not 7 the only factor. As I stated before, margin is a 8 factor. So if we are making our margin, we would not 9 raise our price to follow a competitor. 10 Q. So once you achieved your goal margin, you 11 would not necessarily increase your price, even if a 12 competitor's price increased? 13 A. That is correct. 14 Q. Has Publix's strategy for egg pricing changed 15 over time from the beginning of when you became category 16 manager of dairy to now? 17 A. I don't remember specifically. 18 Q. What are the target margins for Publix for 19 shell eggs? 20 A. I don't know what they are. 21 Q. Would it be in the range of 5 percent, or 22 50 percent? 23 MR. GERMAINE: Objection to form. 24 A. I don't know specifically the number. 25 Q. Can you give me an estimate?</p>	<p style="text-align: right;">141</p> <p>1 A. Not necessarily. 2 Q. You didn't communicate with the buyer about the 3 pricing strategy of eggs? 4 A. I did. 5 Q. And that pricing strategy would include the 6 margin that Publix was aiming to make on its eggs; 7 correct? 8 A. It would, but that margin was in -- is in the 9 pricing system. It's just been a long time ago, so I 10 can't remember the -- the specific numbers. 11 Q. As business development director, do you have 12 any input on the retail pricing of eggs? 13 A. That is the responsibility of the -- of the 14 category team, the buyer and the category manager. 15 Q. And would you work with the category managers 16 at all to set strategy for pricing? 17 A. No, that is their responsibility. 18 Q. Are you familiar with the term loss leader? 19 A. Yes. 20 Q. What is a loss leader? 21 A. An item that a -- a retailer will put out there 22 at at or below cost to attract customers into their 23 store, so they're willing to sell it and not make any 24 money, to attract customers. 25 Q. And they want to attract customers because</p>

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<p style="text-align: right;">142</p> <p>1 they're hoping that they will make money on other 2 products those customers buy; correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Were eggs ever used as a loss leader?</p> <p>5 A. I don't recall.</p> <p>6 Q. Are eggs higher margin products than other 7 products in the dairy department, or lower?</p> <p>8 A. I don't recall specifically.</p> <p>9 Q. As category manager for dairy, were you aware 10 that shoppers at Publix Super Markets would frequently 11 buy eggs when they came in the store?</p> <p>12 A. Yes. It's a high unit moving item.</p> <p>13 Q. And because of that, was it a particularly good 14 item to use as a loss leader or for promotions?</p> <p>15 MR. GERMAINE: Objection to form.</p> <p>16 A. It was a good item for a promotion.</p> <p>17 Q. Did you run egg promotions while you were 18 category manager?</p> <p>19 A. Yes.</p> <p>20 Q. How frequently would you promote eggs?</p> <p>21 A. I don't recall.</p> <p>22 Q. Are promotions done on a zone basis?</p> <p>23 A. No.</p> <p>24 Q. They could be across all Publix stores?</p> <p>25 A. They could be across all -- most of the time</p>	<p style="text-align: right;">144</p> <p>1 A. No, I do not.</p> <p>2 Q. Do you recall ever issuing coupons or ads for 3 egg products?</p> <p>4 A. Ads. I don't remember coupons for the egg 5 substitutes.</p> <p>6 Q. What factors does Publix consider when 7 determining whether it should offer a discount or 8 promotional price on eggs?</p> <p>9 A. Incremental sales, the -- is one factor. The 10 profitability of the item is a factor. The demand is 11 a -- is a factor, which would be the, you know, the 12 customer demand, the draw it would have for them.</p> <p>13 Q. When you issued coupons or had discount on 14 eggs, were they specific to Publix brand eggs, or might 15 they also apply to branded eggs?</p> <p>16 A. The branded eggs too, or also.</p> <p>17 Q. And you mentioned that you might discuss a 18 promotion or a discount with the egg supplier 19 themselves; correct?</p> <p>20 A. That would be correct.</p> <p>21 Q. Did the discounts or promotions ever come from 22 the egg producer?</p> <p>23 A. On branded eggs, we would get promotions from 24 them. On the Publix brand, no.</p> <p>25 Q. So for the branded eggs and egg products, let's</p>
<p style="text-align: right;">143</p> <p>1 they were across -- my recollection is it was across all 2 stores, but we have the ability for it not to be.</p> <p>3 Q. To be specific to a certain zone?</p> <p>4 A. No, specific to a certain ad version. That's a 5 different system when it goes by ad versions.</p> <p>6 Q. Okay. So ads in certain cities that might 7 apply to Publix stores; is that correct?</p> <p>8 A. Exactly.</p> <p>9 Q. Do you know if Publix ever ran any ads or 10 coupons on eggs while you were category manager?</p> <p>11 A. I do remember, yeah, we ran ads on eggs, and we 12 did have coupons on eggs for a while, and then we 13 stopped. We had actually coupons that were applied to 14 egg packages that you could peel off.</p> <p>15 Q. On the cartons?</p> <p>16 A. On the carton. Then we stopped that program.</p> <p>17 Q. Do you know approximately what time frame that 18 was?</p> <p>19 A. It was while I was category manager, and we 20 stopped it before I left that job.</p> <p>21 Q. What about egg products or liquid eggs? Did 22 you ever run promotions on liquid eggs?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall ever using liquid eggs as a loss 25 leader?</p>	<p style="text-align: right;">145</p> <p>1 say the egg producer called up the buyer and said, "We 2 want to offer a 5 percent discount on our eggs." That 3 would be 5 percent off of the cost that you paid for the 4 eggs; correct?</p> <p>5 Is that correct?</p> <p>6 A. The buyer negotiates with --</p> <p>7 Q. A certain discount?</p> <p>8 A. -- a certain discount with the supplier.</p> <p>9 Q. And if the supplier wanted to do one of these 10 promotions and they offered a short-term limited 11 discount on its egg supplying, would Publix take that 12 discount and pass it on to the consumer as a promotion?</p> <p>13 A. Yes.</p> <p>14 Q. And would it pass on the entire amount of the 15 discount?</p> <p>16 A. We may pass on -- it depends.</p> <p>17 Q. What does it depend on?</p> <p>18 A. It depends on -- that's a negotiated thing 19 between the buyer and the supplier. So the buyer wants 20 to get to a certain retail promoted price, and funding 21 to get to that level is between them and the supplier, 22 so that's why it depends.</p> <p>23 Q. So the supplier is seeking to target a specific 24 retail price; is that correct?</p> <p>25 A. Generally, yes, they are.</p>

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<p style="text-align: right;">146</p> <p>1 Q. And he's trying to work with the buyer to reach 2 that price?</p> <p>3 A. Yes.</p> <p>4 Q. Has Publix ever sold its eggs for a loss?</p> <p>5 MR. GERMAINE: Objection to form.</p> <p>6 A. Yes, I can remember when I was category 7 manager, for Easter, we sold eggs at a loss. It was an 8 Easter ad. Because the price went up. The cost went 9 up, but we already had our ad price set and it was 10 beyond our capability changing the ad price, so the eggs 11 were sold at a loss. That's the only time I can 12 remember we sold eggs at a loss.</p> <p>13 Q. Do you recall when that was?</p> <p>14 A. A long time ago.</p> <p>15 Q. When you were category manager?</p> <p>16 A. When I was category manager. In the earlier 17 part of my term, because in the end we quit advertising 18 eggs at Easter, and that's because the demand was high 19 and customers would buy them anyways, so -- plus the 20 rising cost was hard to control or predict.</p> <p>21 MR. GERMAINE: Can we take a break?</p> <p>22 MS. ADENDORFF: Yeah. I think we'll need to 23 take a lunch break. I think we'll go long enough 24 today.</p> <p>25 MR. GERMAINE: Okay. Well, I think we may</p>	<p style="text-align: right;">148</p> <p>1 authorize promotions on eggs?</p> <p>2 A. No.</p> <p>3 Q. How would Publix document specific promotions 4 it was going to run on eggs?</p> <p>5 A. We had an ad plan.</p> <p>6 Q. Any other ways to document if there was going 7 to be a price drop due to a promotion on eggs?</p> <p>8 A. A deal sheet.</p> <p>9 Q. What's a deal sheet?</p> <p>10 A. It is a cost promotion form.</p> <p>11 Q. What would --</p> <p>12 A. So that would be a form -- to your last 13 question, that is a form, but it's -- it is the form 14 whereby suppliers give costs to Publix on. So the buyer 15 manages that process.</p> <p>16 Q. And does this appear to be a deal sheet to you?</p> <p>17 A. No.</p> <p>18 Q. So you've never seen any form like this?</p> <p>19 A. I can't say never, but I can't remember. I 20 just don't remember seeing it. Obviously -- and I may 21 not have been, because Bessie signed it.</p> <p>22 Q. At the time, Bessie Foster did work for you, 23 though?</p> <p>24 A. Yes.</p> <p>25 Q. And this sheet appears to say that -- let's</p>
<p style="text-align: right;">147</p> <p>1 have --</p> <p>2 THE VIDEOGRAPHER: Go off the record?</p> <p>3 MR. GERMAINE: Yeah.</p> <p>4 THE VIDEOGRAPHER: We're now off the record.</p> <p>5 The time is 12:19 p.m.</p> <p>6 (Recess from 12:19 p.m. until 12:32 p.m.)</p> <p>7 THE VIDEOGRAPHER: We're now on the record.</p> <p>8 The time is 12:32 p.m.</p> <p>9 (Bates Exhibit 12 was marked for 10 identification.)</p> <p>11 MS. ADENDORFF: I'm sorry, I only have three 12 copies of this exhibit. I don't know if y'all can 13 share it.</p> <p>14 BY MS. ADENDORFF:</p> <p>15 Q. You have in front of you what's been marked 16 Exhibit 12. This is highly confidential document 17 PUB_EGGS_012867. And this says that it's an 18 authorization for promotional cartons.</p> <p>19 Do you recognize this document?</p> <p>20 A. I don't recall this document. It's been a long 21 time.</p> <p>22 Q. And who is Bessie Foster?</p> <p>23 A. She was a buyer who worked for me.</p> <p>24 Q. Were you familiar with any particular form that 25 Publix used when you were dairy category manager to</p>	<p style="text-align: right;">149</p> <p>1 flip to the second page, the Eggs Promotion Fact Sheet. 2 It says coupon value is free eggs with purchase of three 3 Grands Biscuits.</p> <p>4 So does this appear to represent that Publix 5 was going to give away eggs with the purchase of Grands 6 biscuits?</p> <p>7 MR. GERMAINE: Objection to form.</p> <p>8 A. It says free eggs up to a dollar, so if you 9 chose an egg item that was over a dollar, it wouldn't be 10 free. But, yes, when it's purchased with the three 11 biscuits.</p> <p>12 Q. And would this be an example of Publix selling 13 eggs below cost?</p> <p>14 A. No, it would not.</p> <p>15 Q. Why not?</p> <p>16 A. Because the supplier that sells the biscuits is 17 giving the dollar, giving the cost of the eggs to 18 Publix.</p> <p>19 Q. So this promotion is an example of a time when 20 a supplier of a different product would affect the price 21 of eggs?</p> <p>22 A. Not really. The price of eggs didn't change.</p> <p>23 Q. For Publix's receipts, but for its customers, 24 it would; correct?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">150</p> <p>1 Q. Okay.</p> <p>2 (Bates Exhibit 13 was marked for</p> <p>3 identification.)</p> <p>4 Q. You have in front of you Exhibit 13, a highly</p> <p>5 confidential document Bates stamped PUB_EGGS_012295; is</p> <p>6 that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And do you recognize this document?</p> <p>9 A. No, I do not.</p> <p>10 Q. In the bottom right-hand corner of the</p> <p>11 document, it says Acosta. Do you know who Acosta is?</p> <p>12 A. It is a brokerage -- food brokerage.</p> <p>13 Q. What is a food broker?</p> <p>14 A. Third party. They represent manufacturers to</p> <p>15 retailers.</p> <p>16 Q. So they are a middleman in the buyer/purchasing</p> <p>17 relationship; is that right?</p> <p>18 A. That is correct.</p> <p>19 Q. Do any -- does Acosta represent any egg</p> <p>20 suppliers that you know of?</p> <p>21 A. I don't remember.</p> <p>22 Q. Looking at the slide, it says: "Rising prices</p> <p>23 increased dollar sales without hurting consumption."</p> <p>24 And then it -- then below the Publix logo, it</p> <p>25 says: "Fresh eggs are a \$134.7 million segment. Egg</p>	<p style="text-align: right;">152</p> <p>1 A. It appears to be.</p> <p>2 Q. Would you have been in the meeting where these</p> <p>3 presentations would have been shown?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 A. Not necessarily, because the buyer is the key</p> <p>6 contact. So the buyer has most all the meetings with</p> <p>7 the suppliers; category manager only in some.</p> <p>8 Q. Have you heard of the Food Marketing Institute?</p> <p>9 A. Yes.</p> <p>10 Q. What is the Food Marketing Institute?</p> <p>11 A. It's an organization for the grocery business,</p> <p>12 for suppliers and retailers. I don't know what all they</p> <p>13 do, to be exact.</p> <p>14 Q. Do you know if it's a large organization?</p> <p>15 A. That would be my perception, that it is a large</p> <p>16 organization.</p> <p>17 Q. Do you know if Publix is a member of FMI?</p> <p>18 A. Yes, Publix is a member.</p> <p>19 Q. Do you know if any employees from Publix hold</p> <p>20 positions at FMI?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know of any Publix employees that are</p> <p>23 involved with FMI?</p> <p>24 A. I don't know.</p> <p>25 Q. How do you know that Publix is a member of FMI?</p>
<p style="text-align: right;">151</p> <p>1 substitutes are an \$18.9 million segment. Despite the</p> <p>2 significant price increases, fresh egg unit sales have</p> <p>3 remained stable."</p> <p>4 Do you recall that the price of eggs increased</p> <p>5 without hurting Publix's sales of eggs?</p> <p>6 A. I do not recall specifically.</p> <p>7 Q. Do you recall ever seeing this slide?</p> <p>8 A. No.</p> <p>9 Q. Would Publix have asked Acosta to put together</p> <p>10 this slide?</p> <p>11 A. I don't know.</p> <p>12 Q. Did Publix ever ask Acosta for information</p> <p>13 about the egg market?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did Publix ever receive information from Acosta</p> <p>16 about the egg market?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you ever meet with Acosta or any</p> <p>19 representatives from Acosta?</p> <p>20 A. Yes, I have met with Acosta.</p> <p>21 Q. And would they give you presentations about the</p> <p>22 retail grocery business?</p> <p>23 A. Yes.</p> <p>24 Q. And does this slide appear to be one of those</p> <p>25 presentations?</p>	<p style="text-align: right;">153</p> <p>1 A. Because I've been told they were.</p> <p>2 Q. By who?</p> <p>3 A. My boss.</p> <p>4 Q. Do you know if -- do you know who Publix's CEO</p> <p>5 is?</p> <p>6 A. Yes.</p> <p>7 Q. Who is it?</p> <p>8 A. Ed Crenshaw.</p> <p>9 Q. And do you know if he is involved with FMI</p> <p>10 personally?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know why Publix is a member of FMI?</p> <p>13 A. Because it supports our industry.</p> <p>14 Q. So FMI works for the benefit of the industry?</p> <p>15 A. Yes.</p> <p>16 Q. Is FMI a source of information for the</p> <p>17 industry?</p> <p>18 A. Yes.</p> <p>19 Q. Would you consider information from FMI</p> <p>20 reliable?</p> <p>21 A. Yes.</p> <p>22 Q. And why would you consider it reliable?</p> <p>23 A. Because it is -- it supports our industry from</p> <p>24 the supplier and the retailer. Just kind of a</p> <p>25 collaboration, is my limited understanding of it,</p>

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<p style="text-align: right;">154</p> <p>1 between those -- the experts in our industry, so...</p> <p>2 And because we -- my company, Publix, is a</p> <p>3 member of it, so that means trust in the -- or</p> <p>4 reliability with that organization, as my interpretation</p> <p>5 of it.</p> <p>6 Q. We discussed earlier the term animal welfare.</p> <p>7 Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. And you testified that you understood animal</p> <p>10 welfare with respect to egg-laying hens could involve</p> <p>11 cage space; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And you testified that increasing cage space</p> <p>14 increases animal welfare of hens, as you understood it?</p> <p>15 A. Yes.</p> <p>16 Q. Does Publix have established animal welfare</p> <p>17 guidelines?</p> <p>18 A. I don't know.</p> <p>19 Q. In your purchasing, have you ever imposed</p> <p>20 animal welfare requirements on suppliers?</p> <p>21 A. What I recall us doing is asking our suppliers</p> <p>22 to perform best practices in their industry, and for</p> <p>23 eggs, I think that would include best practices in</p> <p>24 animal welfare.</p> <p>25 Q. And who at Publix decided what best practices</p>	<p style="text-align: right;">156</p> <p>1 A. No.</p> <p>2 Q. Do you know if anyone did at Publix?</p> <p>3 A. I do not know.</p> <p>4 (Bates Exhibit 14 was marked for</p> <p>5 identification.)</p> <p>6 Q. You have in front of you what's been marked</p> <p>7 Exhibit 14, a highly confidential document Bates stamped</p> <p>8 PUB_EGGS_020727; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And at the top, this document says Publix</p> <p>11 Animal Welfare Statement. Do you recognize this</p> <p>12 document?</p> <p>13 A. No, I don't.</p> <p>14 Q. Does this document refresh your recollection in</p> <p>15 any way as to whether Publix has an animal welfare</p> <p>16 policy?</p> <p>17 A. Not yet. Let me read it.</p> <p>18 Q. Sure.</p> <p>19 A. So what was the question again?</p> <p>20 Q. Does this refresh your recollection as to</p> <p>21 whether Publix has an animal welfare policy?</p> <p>22 A. No, it really doesn't, because I really don't</p> <p>23 remember.</p> <p>24 Q. Do you see at the bottom where it says</p> <p>25 July 2002?</p>
<p style="text-align: right;">155</p> <p>1 were for each particular product?</p> <p>2 A. Each particular type of product defined as</p> <p>3 what?</p> <p>4 Q. Well, animal welfare comes from certain kinds</p> <p>5 of animals, and typically animal welfare standards</p> <p>6 relate to each different type of animal and the proper</p> <p>7 way to farm that animal. So assuming all of that, who</p> <p>8 decides best practices in relation to egg-laying hens</p> <p>9 versus cows versus pork?</p> <p>10 A. That would be CQA department.</p> <p>11 Q. And do you know if CQA consults with any third</p> <p>12 parties in developing those standards?</p> <p>13 A. I do not know.</p> <p>14 Q. Have you ever heard of FMI's animal welfare</p> <p>15 guidelines?</p> <p>16 A. I've heard of it.</p> <p>17 Q. What do you know about it?</p> <p>18 A. Not much at all.</p> <p>19 Q. Do you recall when the guidelines came into</p> <p>20 existence?</p> <p>21 A. No, I don't. I'm thinking it may be after I</p> <p>22 moved out of dairy or right at the end. I don't know.</p> <p>23 Q. Did you play -- I think I know the answer to</p> <p>24 this one, but did you play any part in the development</p> <p>25 of those guidelines?</p>	<p style="text-align: right;">157</p> <p>1 A. Uh-huh.</p> <p>2 Q. Now, looking back at the first paragraph, it</p> <p>3 says: "We endorse the Animal Welfare Guidelines</p> <p>4 developed by the Food Marketing Institute (FMI) and the</p> <p>5 National Council of Chain Restaurants (NCCR), and we've</p> <p>6 adopted these guidelines as the standard requirement for</p> <p>7 our suppliers."</p> <p>8 Correct?</p> <p>9 A. Correct.</p> <p>10 Q. In July 2002, were you made aware that the</p> <p>11 FMA -- FMI guidelines were the standard requirement for</p> <p>12 Publix's suppliers?</p> <p>13 A. I just don't remember.</p> <p>14 Q. Do you -- you dealt with suppliers of eggs;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you had requirements for those suppliers;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if compliance with the FMI</p> <p>21 guidelines was one of those requirements?</p> <p>22 A. I don't remember. I would have relied on the</p> <p>23 CQA person to be a part of that or answer that question.</p> <p>24 Q. So any animal welfare requirements that were</p> <p>25 part of Publix's questionnaires to suppliers or dealings</p>

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<p style="text-align: right;">158</p> <p>1 with suppliers would have come from CQA?</p> <p>2 A. Any questions dealing with?</p> <p>3 Q. Animal welfare requirements as they applied --</p> <p>4 A. We had input to the questionnaire, so --</p> <p>5 Q. So animal welfare --</p> <p>6 A. It could have come from us or CQA, but this is</p> <p>7 more in the realm of CQA. That's why I'm saying this</p> <p>8 is --</p> <p>9 Q. Were you aware that those questionnaires</p> <p>10 included any questions regarding animal welfare</p> <p>11 standards?</p> <p>12 A. I don't remember what was on the egg</p> <p>13 questionnaire.</p> <p>14 Q. Do you recall whether any animal welfare</p> <p>15 requirements were communicated to egg suppliers while</p> <p>16 you were category manager of dairy?</p> <p>17 A. I just don't remember.</p> <p>18 Q. Do you recall discussing animal welfare with</p> <p>19 respect to egg-laying hens when you were category</p> <p>20 manager of dairy.</p> <p>21 A. Yes. Like I mentioned before, I did remember</p> <p>22 some of those discussions going on.</p> <p>23 Q. And that was with Tampa Farms; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall any discussions outside of your</p>	<p style="text-align: right;">160</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 A. What was the question again?</p> <p>3 Q. Was part of FMI -- Publix's reliance on FMI</p> <p>4 because Publix was aware that increasing animal welfare</p> <p>5 standards would increase the cost of eggs and it didn't</p> <p>6 want to be at a competitive disadvantage with its</p> <p>7 competitors as it relates to the cost of eggs?</p> <p>8 MR. GERMAINE: Objection to form.</p> <p>9 A. We wanted animal welfare because it was -- it's</p> <p>10 all about the quality and manufacturers going by best</p> <p>11 practices. Okay? Publix, or category manager, me, I'm</p> <p>12 not the expert in that industry. I learn that from the</p> <p>13 egg suppliers. They're the experts in the industry.</p> <p>14 And FMI is a help to that.</p> <p>15 Q. You testified earlier that Publix wanted to</p> <p>16 remain competitive in its pricing of eggs; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And if it increased its costs by adopting</p> <p>19 animal welfare standards, that would hurt its</p> <p>20 competitive position relative to its competitors if</p> <p>21 those competitors did also not adopt animal welfare</p> <p>22 standards; right?</p> <p>23 MR. GERMAINE: Objection to form.</p> <p>24 MR. RAYLE: Join.</p> <p>25 A. It could.</p>
<p style="text-align: right;">159</p> <p>1 discussion with Tampa Farms?</p> <p>2 A. I had a discussion with my boss, which was</p> <p>3 Dave Cerra at the time, and I can -- what I remember</p> <p>4 about that is discussions that we -- we felt like FMI</p> <p>5 should be a part of it. So that's probably going back</p> <p>6 to the beginning. But, yeah, that's what I remember,</p> <p>7 that we needed help. We felt like the egg industry in</p> <p>8 that needed direction or help and FMI would be a good</p> <p>9 source for that to happen.</p> <p>10 Outside of that discussion, I don't remember</p> <p>11 what happened, what he did with it.</p> <p>12 Q. Why did you feel FMI would be a good person --</p> <p>13 good entity to be a part of it?</p> <p>14 A. Because they support our industry.</p> <p>15 Q. Was it in part so they could establish uniform</p> <p>16 standards that could be applied by the industry?</p> <p>17 A. Yes.</p> <p>18 Q. You testified earlier that increasing animal</p> <p>19 welfare standards could increase the cost of eggs;</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. Would part of it also be that Publix wanted to</p> <p>23 make sure that if it was bearing the additional cost of</p> <p>24 animal welfare eggs that others in the industry were</p> <p>25 also sharing that cost?</p>	<p style="text-align: right;">161</p> <p>1 Q. Did you or anyone in your department monitor</p> <p>2 what other animal welfare standards your competitors</p> <p>3 adopted?</p> <p>4 A. Not that I'm aware of. I don't remember.</p> <p>5 Q. Do you know if Publix did any scientific</p> <p>6 testing or consulted any experts on its own before</p> <p>7 adopting the FMI guidelines?</p> <p>8 MR. GERMAINE: Objection to form.</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know if the FMI guidelines had</p> <p>11 provisions in them that applied specifically to</p> <p>12 egg-laying hens?</p> <p>13 A. I don't know.</p> <p>14 (Bates Exhibit 15 was marked for</p> <p>15 identification.)</p> <p>16 Q. And this is Exhibit 15 Bates stamped FMI-00015.</p> <p>17 Do you recognize this document?</p> <p>18 A. I do not remember it.</p> <p>19 Q. Do you recognize FMI's logo at the top of the</p> <p>20 document?</p> <p>21 A. Yes.</p> <p>22 Q. And this says that it's the June 2002 Report</p> <p>23 FMI-NCCR Animal Welfare Program. Is this the report</p> <p>24 that you understood Publix adopted?</p> <p>25 MR. GERMAINE: Objection to form.</p>

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<p style="text-align: right;">162</p> <p>1 A. I don't remember Publix adopting it, so 2 obviously I don't remember this form. 3 Q. Flipping to the second page, do you see where 4 it says "FMI-NCCR Goals" and then the first bullet point 5 is "Consistency across the US retail sector"? 6 A. I see it. 7 Q. Did Publix -- as you understood it, did 8 Publix's policy of animal welfare, did it want 9 consistency in animal welfare standards across the US 10 retail sector? 11 MR. GERMAINE: Objection to form. 12 A. The same answer applies I just gave you a 13 minute ago. What our concern was is that our suppliers 14 do the right thing for animals, and best practices in 15 their industry, as it concerns Publix in providing the 16 best products for our customers. 17 Q. Flipping to the next page, do you see where it 18 says "Laying Hens"? 19 A. Yes. 20 Q. In the first sentence under there, it says: 21 "FMI and NCCR recommend to their members the 2002 22 guideline of the United Egg Producers (UEP) for use with 23 their suppliers of eggs and egg products." 24 Do you see that? 25 A. I see that.</p>	<p style="text-align: right;">164</p> <p>1 as the UEP certified program? 2 A. That's -- I remember they had an animal care 3 certification, because I think we might have even put a 4 seal on our eggs at one time from them. 5 Q. So you recall that there was a logo associated 6 with that certified program? 7 A. Yeah, that's what I remember. 8 Q. And that that logo was on Publix's eggs? 9 A. I don't know for sure. 10 Q. But you do recall that you sold some eggs that 11 contained that logo? 12 A. Yeah. 13 Q. And the only egg cartons which you participated 14 in designing were the Publix brand eggs; correct? 15 A. That's correct. 16 Q. So do you recall if the logo was on Publix 17 brand cartons? 18 A. I just don't recall. 19 Q. Let's look back for just one second at 15, 20 Exhibit 15. Do you see on the first page where it says: 21 "The issues covered in this report are important and 22 complicated. Some recommendations contained within this 23 report have economic implications." 24 You testified earlier that you understood 25 increasing animal welfare standards could have an</p>
<p style="text-align: right;">163</p> <p>1 Q. Does that refresh your recollection of whether 2 the FMI-NCCR Animal Welfare Guidelines contained 3 provisions relating to laying hens? 4 A. The UEP would be for laying hens, so, yeah. 5 Q. Are you familiar with United Egg Producers? 6 A. Yes, I remember that. 7 Q. What do you understand the United Egg Producers 8 is? 9 A. What I -- what I remember about that is the egg 10 suppliers formed that association, whatever, to help in 11 forming best practices in animal welfare. I don't know 12 if that's correct. That's what I remember the purpose 13 of that was for. 14 Q. Do you know -- have you ever heard of the 15 United Egg Producers Certified Program? 16 A. Yes. I think that's an output of that 17 organization. 18 Q. And you understand that that relates to animal 19 welfare for egg-laying hens? 20 A. Yes. 21 Q. And have you ever heard of UEP's Animal Care 22 Certified Program, or the Animal -- yeah, Animal Care 23 Certified? 24 A. Yes. 25 Q. And do you understand that to be the same thing</p>	<p style="text-align: right;">165</p> <p>1 economic impact; correct? 2 A. Yes. 3 Q. And that increasing animal welfare standards on 4 eggs could increase the cost of producing eggs? 5 A. Yes. 6 Q. Do you know what the United Egg Producers 7 Certified Program entails? 8 A. I don't remember. 9 Q. Do you know if it relates to cage space? 10 A. I don't remember, so... 11 Q. Do you recall if it relates to backfilling? 12 A. I don't know what backfilling is. 13 Q. Do you know what molting is? 14 A. Yes. 15 Q. Do you know if the animal welfare guidelines 16 lay out any requirements as to molting? 17 A. I don't remember. 18 Q. You testified earlier that you -- you recall 19 that increasing cage space for a bird could 20 increase animal -- its animal welfare; correct? 21 A. Yeah. 22 Q. So do you know if the FMI guidelines, animal 23 welfare guidelines, or the UEP certified program that 24 FMI endorsed had anything to do with increasing cage 25 space to increase the welfare of hens?</p>

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<p style="text-align: right;">166</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 A. I just don't remember that. I don't remember</p> <p>3 reading those --</p> <p>4 Q. You do recall that --</p> <p>5 A. -- guidelines.</p> <p>6 Q. -- increasing cage space was one of the issues</p> <p>7 for animal welfare?</p> <p>8 A. Yes, I do remember.</p> <p>9 MR. GERMAINE: Object to form.</p> <p>10 Q. But you don't recall whether the program</p> <p>11 addressed that issue?</p> <p>12 A. Correct.</p> <p>13 Q. And you don't recall if animal welfare</p> <p>14 standards had any minimum cage space requirements?</p> <p>15 A. Correct.</p> <p>16 Q. And this morning we looked at a document where</p> <p>17 it demonstrated that there was -- over a certain period</p> <p>18 of years, different cage sizes were mentioned as part of</p> <p>19 an audit?</p> <p>20 A. (Indicating.)</p> <p>21 Q. Right. Do you recall that?</p> <p>22 A. Yes.</p> <p>23 Q. And does that refresh your recollection at all</p> <p>24 that cage spaces increased under the animal welfare</p> <p>25 program during that time period?</p>	<p style="text-align: right;">168</p> <p>1 A. Correct.</p> <p>2 (Bates Exhibit 16 was marked for</p> <p>3 identification.)</p> <p>4 Q. You have in front of you Exhibit 16, a highly</p> <p>5 confidential document Bates stamped PUB_EGGS_011761.</p> <p>6 If you could turn to the second page of that</p> <p>7 document. I'll give you just a second to review it.</p> <p>8 Do you recognize this document?</p> <p>9 A. I do not remember it.</p> <p>10 Q. Do you see at the bottom that your -- your name</p> <p>11 and phone extension is listed under "Questions"?</p> <p>12 A. That is my name.</p> <p>13 Q. Is that your phone extension?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see at the top that it's to all</p> <p>16 Publix egg producers/suppliers from David Cerra,</p> <p>17 business development director?</p> <p>18 A. Yes.</p> <p>19 Q. And you testified David Cerra was your boss;</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the date on this is July 2002?</p> <p>23 A. Yes.</p> <p>24 Q. And the subject "FMI-NCCR Animal Welfare</p> <p>25 Guidelines"?</p>
<p style="text-align: right;">167</p> <p>1 MR. GERMAINE: Objection to form. Asked and</p> <p>2 answered. Lacks foundation.</p> <p>3 MR. RAYLE: Join.</p> <p>4 Q. You can answer.</p> <p>5 A. I just -- I don't remember that form. It's the</p> <p>6 first time I remember seeing it was when you gave it to</p> <p>7 me this morning, so...</p> <p>8 Q. Do you recall the issue of whether cage spaces</p> <p>9 increased over the time period that you were category</p> <p>10 manager for eggs, or dairy?</p> <p>11 MR. GERMAINE: Objection to form.</p> <p>12 A. I don't know if it did or not.</p> <p>13 Q. Do you recall cage spaces being discussed</p> <p>14 during that time period?</p> <p>15 A. Yes.</p> <p>16 Q. And what do you recall?</p> <p>17 A. That it was discussed under the -- under animal</p> <p>18 welfare.</p> <p>19 Q. And you understood that animal welfare related</p> <p>20 to increasing cage spaces; right?</p> <p>21 MR. GERMAINE: Objection. Asked and answered</p> <p>22 three times.</p> <p>23 Q. But you don't recall whether the animal welfare</p> <p>24 standards related to cage space?</p> <p>25 MR. GERMAINE: Objection. Asked and answered.</p>	<p style="text-align: right;">169</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall in or around July 2002 sending a</p> <p>3 memo or David -- Dave Cerra sending a memo to all Publix</p> <p>4 egg producers and suppliers?</p> <p>5 A. I just don't remember it.</p> <p>6 Q. Do you have any reason to doubt that that is a</p> <p>7 true memo from Publix's files?</p> <p>8 MR. GERMAINE: Objection to form.</p> <p>9 Q. Do you have any reason to doubt the accuracy of</p> <p>10 this document?</p> <p>11 MR. GERMAINE: Objection to form.</p> <p>12 A. I can doubt anything. I can doubt my birthday</p> <p>13 if I -- if I don't remember it. I just don't think</p> <p>14 that's --</p> <p>15 Q. Do you have any reason to doubt it?</p> <p>16 MR. GERMAINE: Objection to form.</p> <p>17 A. All I can say is I just don't remember it.</p> <p>18 That's -- that's fair.</p> <p>19 Q. And Dave Cerra would have discussed this with</p> <p>20 you before he sent a memo to egg suppliers; correct?</p> <p>21 A. I would have seen the document if he sent</p> <p>22 something to suppliers with my name on it.</p> <p>23 Q. And you see at the end of the first paragraph</p> <p>24 it says: "Publix has adopted the FMI-NCCR Animal</p> <p>25 Welfare Guidelines as the standard requirement for all</p>

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<p style="text-align: right;">170</p> <p>1 vendors to follow in dealing with animal welfare." 2 Correct? 3 A. Yes. 4 Q. Does that refresh your recollection at all of 5 whether Publix adopted the animal welfare guidelines as 6 a standard requirement for its suppliers? 7 A. Publix wanted suppliers, requested suppliers, 8 to follow the guidelines. 9 Q. And if Publix made a request of its suppliers, 10 it was because it wanted them to comply with its 11 standards; correct? 12 A. Yes. It's a request. 13 Q. And this memo asks in the next paragraph that 14 Publix's egg suppliers send Publix a letter whether or 15 not they're going to agree to follow those guidelines; 16 correct? 17 A. Yes. 18 Q. And do you know if any egg suppliers, in fact, 19 did so? 20 A. I don't remember. 21 Q. And do you recall any animal-- strike that. 22 Do you recall any egg suppliers contacting you 23 in response to requirements regarding animal welfare? 24 A. I don't remember. 25 Q. Do you remember any conversations with your</p>	<p style="text-align: right;">172</p> <p>1 A. I'm sorry? 2 Q. Until Cal-Maine purchased Tampa Farm Service, 3 it remained a supplier to Publix; correct? 4 A. Yes. 5 Q. Do you know who at Publix would have directed 6 Dave Cerra to write that letter? 7 MR. GERMAINE: Objection to form. 8 A. Dave could have written it all by himself, so 9 the answer is no, I don't know. 10 Q. You testified just a moment ago that you 11 remembered that Tampa Farms was following FMI's animal 12 welfare guidelines. Why -- how do you recall that? 13 A. They were the ones we had conversations with 14 about the -- the standards, is my perception. That was 15 the UEP. And maybe I'm confused about the UEP and FMI. 16 I thought they were kind of the same. 17 Q. We saw on the FMI document that FMI endorsed 18 the UEP certified program; correct? 19 A. (Nodding head.) 20 Q. So when we're talking about the requirements 21 there, we're talking about the UEP requirements; right? 22 MR. GERMAINE: Objection. 23 A. Yes. 24 Q. And when you visited Tampa Farms, did you 25 discuss the UEP certified program?</p>
<p style="text-align: right;">171</p> <p>1 buyer about whether any egg suppliers contacted Publix 2 related to animal welfare? 3 A. No. 4 Q. Looking at the first page of the document, you 5 see that this is a letter from Tampa Farm Services, Mike 6 Bynum -- and you testified earlier that you know Mike 7 Bynum; correct -- 8 A. Yes. 9 Q. -- to David Cerra, your boss; right? 10 A. Yes. 11 Q. And this letter says: "Dear Dave: In response 12 to your letter of July 11 concerning animal welfare, 13 please be advised that Tampa Farm Services, Inc. is 14 committed to producing eggs for Publix in accordance 15 with the recently published FMI-NCCR Animal Welfare 16 Guidelines." 17 Does this reflect to you that Tampa Farms 18 communicated to Publix that it was willing to follow 19 those guidelines? 20 A. That's what he says. 21 Q. And do you recall whether Tampa Farm Services, 22 in fact, followed the guidelines? 23 A. That -- I seem to remember, yes, they did. 24 Q. And until Cal-Maine purchased Tampa Farm 25 Services, it remained a supplier to Publix; correct?</p>	<p style="text-align: right;">173</p> <p>1 A. I don't remember what we discussed. 2 Q. Did you ever receive any presentations from 3 your egg buyers about the certified program? 4 A. I don't remember. 5 Q. Looking back at this Exhibit 11, can you look 6 at Question 27 on the third page. And, once again, this 7 is the Publix Super Markets Qualifying Questionnaire for 8 Publix Brand Eggs; right? 9 A. Right. 10 Q. And do you see Question 27 is: "Are your 11 plants in compliance with the FMI-NCCR Animal Welfare 12 Guidelines"? 13 A. I see it. 14 Q. Do you recall that being a question in the 15 questionnaire? 16 A. I don't recall. 17 Q. And do you see Cal-Maine's answer there is 18 "Yes"? 19 A. I do. 20 Q. Do you recall whether Cal-Maine followed the 21 UEP certified program? 22 A. I don't recall. 23 (Bates Exhibit 17 was marked for 24 identification.) 25 Q. This is Exhibit 12, a highly confidential</p>

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<p style="text-align: right;">174</p> <p>1 document Bates stamped PUB_EGGS_007151. 2 MR. RAYLE: Exhibit what? 3 MR. GERMAINE: I think it's 17. 4 MS. ADENDORFF: Seventeen. Did I -- I'm sorry. 5 I was looking at 11 here. 6 BY MS. ADENDORFF: 7 Q. Seventeen. Seventeen; correct? 8 A. Seventeen. 9 Q. And do you recognize this document? 10 A. No, I don't. 11 Q. Are you familiar with Publix's product 12 specifications for its eggs? 13 A. I don't -- I don't remember. It's been a long 14 time ago. 15 Q. Do you know if Publix drafts product 16 specifications for its eggs? 17 A. That's really a question for CQA. They're in 18 charge of the specifications, so who drafted it 19 specifically would be a question for them. 20 Q. CQA -- in your -- to your knowledge, CQA drafts 21 the product specifications? 22 A. To my knowledge, yes, they -- 23 Q. And are these kind of product specifications 24 relevant when you're choosing your suppliers for eggs? 25 A. Yes.</p>	<p style="text-align: right;">176</p> <p>1 Q. And if the -- if the cartons bore that logo, it 2 would be because they complied with that program; 3 correct? 4 A. Correct. 5 Q. Do you know if any egg supplier to Publix has 6 ever been unable to provide certified eggs? 7 A. I don't recall. 8 Q. If that did occur, would Publix have chosen a 9 different supplier? 10 A. I don't know. 11 Q. If a supplier is unable to meet any of these 12 specifications in the product specification that the CQA 13 writes and drafts, does Publix continue to use that 14 supplier? 15 MR. GERMAINE: Objection to form. 16 A. Depends. 17 Q. It depends on what? 18 A. If a supplier can't meet specification, there's 19 got to be a reason for it, and then it becomes -- you 20 have to investigate and why and wherefores, but CQA 21 would be involved in it, so... 22 Q. But as a policy, Publix expects its suppliers 23 to meet its requirements; correct? 24 MR. GERMAINE: Objection to form. 25 A. Publix expects a supplier to meet the</p>
<p style="text-align: right;">175</p> <p>1 Q. And would you have seen such specifications 2 during that process? 3 A. Yes. 4 Q. Do you have any reason to doubt that this is 5 Publix's product specification for jumbo eggs in 2004? 6 It says effective 12/2004. 7 A. No. 8 Q. Okay. Can you read the last sentence under 9 "Product description". 10 A. "Product shall be in accordance with the 11 industry's animal welfare guidelines and carton shall 12 bear the "Animal Care Certified" logo." 13 Q. And if you'd like to, you can flip through this 14 document and you'll see that it contains Publix -- 15 Publix product specifications for several different 16 sizes of eggs -- there's jumbo eggs, jumbo brown, extra 17 large, et cetera -- and that at the end at the product 18 specification is that same sentence, "Product shall be 19 in accordance." Do you see that? 20 A. I see it. 21 Q. And does that refresh your recollection at all 22 as to whether the Publix brand eggs bore the Animal Care 23 Certified logo or the UEP Certified logo? 24 A. That kind of confirms what I said earlier 25 that -- about the logo, so...</p>	<p style="text-align: right;">177</p> <p>1 specification. 2 Q. And we just -- 3 A. The specification is written by CQA. 4 Q. Right. And we just saw that animal welfare was 5 part of that specification; correct? 6 A. Uh-huh, but it could change. 7 Q. Do you know if Publix ever solicited bids from 8 non-UEP certified egg suppliers? 9 A. I don't remember. 10 Q. At the present time, does Publix continue to 11 require its egg suppliers to meet the UEP guidelines? 12 MR. GERMAINE: Objection to form. 13 A. I don't know. 14 Q. You're business development director in charge 15 of eggs; correct? 16 A. I am. 17 Q. And we saw that Dave Cerra, business 18 director -- business development director in 2002, wrote 19 a memo related to animal welfare of eggs; right? 20 A. That's right. 21 Q. And so animal welfare of eggs is part of your 22 current job; correct? 23 A. It is. 24 Q. And are you testifying you don't know whether 25 Publix still has the same requirements?</p>

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<p style="text-align: right;">178</p> <p>1 A. I'm new in the role. Just started in January. 2 We haven't had any discussions on eggs and their 3 specifications or the requirements of what they are 4 currently. 5 Q. Do you know -- do you know that Publix has 6 dropped its requirement that egg suppliers be UEP 7 certified? 8 A. I do not know. 9 Q. Do you know if the UEP Certified logo is still 10 on Publix brand eggs? Cartons. 11 A. I don't know. 12 Q. Did buyers -- while you were category manager 13 of eggs, did egg -- egg suppliers ever approach you or 14 your buyer to inform you that it was raising -- they 15 were raising their prices because of animal welfare? 16 A. I don't remember if they did or not. 17 (Bates Exhibit 18 was marked for 18 identification.) 19 Q. This is Exhibit 18, a highly confidential 20 document, PUB_EGGS_011782. And this appears to be a 21 letter from Tampa Farm Service, and at the end you can 22 see Mike Bynum's name, who you said you know, to Dave 23 Cerra, your boss; correct? 24 A. Correct. 25 Q. In May 2002. Have you ever seen this letter</p>	<p style="text-align: right;">180</p> <p>1 remember. 2 Q. Turning to the second page of this letter, you 3 see the section marked "Estimated Cost of Animal Welfare 4 Enhancements"? 5 Yes? 6 A. Second page? 7 Q. Yes, "Estimated Cost of Animal Welfare 8 Enhancements." 9 A. Okay. 10 Q. And if you look at the -- well, if you can just 11 read those two paragraphs there underneath that. 12 A. Okay. 13 Q. And you see here that Mike Bynum is telling 14 Dave Cerra that increasing cage space as a result of the 15 UEP Animal Welfare Guidelines is going to decrease egg 16 production capacity; correct? That's what this says? 17 A. Uh-huh. 18 Q. And that that will increase the cost of 19 production by 8 cents to 18 cents per dozen? 20 A. Yes, I see that. 21 Q. Do you recall discussing that with Dave Cerra 22 in 2002? 23 A. I don't recall. 24 Q. But you were aware that the animal welfare 25 guidelines would increase the cost of eggs?</p>
<p style="text-align: right;">179</p> <p>1 before? 2 A. I do not remember seeing this letter. 3 Q. And we just saw that Dave Cerra sent a -- sent 4 a letter to egg suppliers in July 2002 communicating 5 Publix's position on the animal welfare guidelines, so 6 this would be before that other letter; correct? 7 A. Correct. 8 Q. And Tampa Farm Service was a Publix supplier at 9 the time; right? 10 A. Yes. 11 Q. Okay. It begins: "Following up on our meeting 12 this past Monday, I wanted to update you on the animal 13 welfare issue as it relates to egg producers." 14 Were you aware at the time that Dave Cerra was 15 receiving updates on animal welfare from Tampa Farm 16 Service? 17 A. I don't remember. 18 Q. Would Dave Cerra have discussed this with you 19 at the time? 20 A. Probably. 21 Q. But you have no recollection of that 22 conversation? 23 A. I just don't remember the -- I told you earlier 24 I remembered conversations about animal welfare, but to 25 this letter specifically, no, I have -- I don't</p>	<p style="text-align: right;">181</p> <p>1 MR. GERMAINE: Objection to the form. Asked 2 and answered. 3 A. Yes. 4 Q. So even before Publix made the decision to 5 communicate to its suppliers that it was requiring 6 compliance with the UEP Animal Welfare Guidelines, it 7 was aware that those guidelines could increase costs; 8 correct? 9 MR. GERMAINE: Objection to form. Misstates 10 prior testimony. 11 Q. You can answer. 12 A. Yes. 13 Q. Can you look at the next page. In the second 14 full paragraph, it says: "If, however, only 50% of a 15 producer's customer base specifies enhanced animal 16 welfare eggs, then the producer would incur all of the 17 costs for certifying this company as welfare compliant." 18 Then it says, in parentheses: "There are no 19 provisions for partial compliance. A producer must be 20 100% enhanced welfare compliant on all hens under his 21 control directly or through affiliates or choose not to 22 participate in the program at all)." 23 Were you aware that the UEP certified program 24 required producers to be 100 percent compliant with the 25 program?</p>

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<p style="text-align: right;">182</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 A. I don't recall that.</p> <p>3 Q. Do you ever -- did you ever discuss how many</p> <p>4 hens under a particular producer's control were meeting</p> <p>5 the guidelines?</p> <p>6 A. No.</p> <p>7 Q. Anything of that nature?</p> <p>8 A. I don't remember anything like that.</p> <p>9 Q. Do you see at the bottom, the bold text on this</p> <p>10 page, it says: "Based on 50,000,000 dozen sold per year</p> <p>11 in the Lakeland and Miami divisions of Publix, this</p> <p>12 would imply an added cost for eggs in the range of</p> <p>13 \$4,000,000 to \$9,000,000 per year."</p> <p>14 When you testified that you knew animal welfare</p> <p>15 could increase the cost of eggs, were you aware of that</p> <p>16 magnitude of an increase?</p> <p>17 A. No.</p> <p>18 Q. And do you recall discussing the magnitude of</p> <p>19 that -- of the cost -- any cost increase with Dave Cerra</p> <p>20 around this time?</p> <p>21 A. No.</p> <p>22 Q. Did any egg producer, to your knowledge, ever</p> <p>23 impose a surcharge on its eggs for animal welfare?</p> <p>24 A. I don't remember.</p> <p>25 Q. Do you recall if there was any addition to the</p>	<p style="text-align: right;">184</p> <p>1 Does this refresh your recollection of whether</p> <p>2 this was ever a 2-cent surcharge on eggs for animal</p> <p>3 welfare purposes?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 A. No, I don't, and I don't remember any</p> <p>6 specifics.</p> <p>7 Q. At the time, would Bessie Foster have told you</p> <p>8 if there was a surcharge?</p> <p>9 A. She may have; she may not have. I don't</p> <p>10 remember.</p> <p>11 Q. Would she normally report changes in pricing to</p> <p>12 you? Pricing formulas.</p> <p>13 A. A pricing formula, she should have, but I don't</p> <p>14 remember if she did or not.</p> <p>15 (Bates Exhibit 20 was marked for</p> <p>16 identification.)</p> <p>17 Q. This is Exhibit 20, highly confidential</p> <p>18 document PUB_EGGS_012953.</p> <p>19 Do you recognize this document?</p> <p>20 A. No.</p> <p>21 Q. Do you know what this document might refer to</p> <p>22 or contain or why it might have been written?</p> <p>23 MR. GERMAINE: Objection to form.</p> <p>24 A. It appears to be the formula pricing for eggs.</p> <p>25 Q. It says at the top: "All prices are based on</p>
<p style="text-align: right;">183</p> <p>1 formula for Publix brand eggs to cover animal welfare</p> <p>2 costs?</p> <p>3 A. I do not remember that.</p> <p>4 (Bates Exhibit 19 was marked for</p> <p>5 identification.)</p> <p>6 Q. This is Exhibit 19, a highly confidential</p> <p>7 document Bates stamped PUB_EGGS_012413.</p> <p>8 And Bessie Foster was the buyer that worked for</p> <p>9 you; correct?</p> <p>10 A. Correct.</p> <p>11 Q. You see at the top of this document it says:</p> <p>12 "Meeting with Bessie Foster, Items for Discussion."</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. In January 2003?</p> <p>16 A. Yes.</p> <p>17 Q. And do you know if this agenda would have</p> <p>18 related to a meeting you would have had with Bessie</p> <p>19 Foster?</p> <p>20 A. I've never seen this before.</p> <p>21 Q. So Item No. 3 on this agenda is "Update on</p> <p>22 Animal Welfare program, Certified Animal Care logo, and</p> <p>23 discussion on animal welfare surcharge."</p> <p>24 And then next to it, in handwriting, someone</p> <p>25 has written "2¢ a dozen."</p>	<p style="text-align: right;">185</p> <p>1 UB Large Southeast market except Medium."</p> <p>2 Does that refresh your recollection at all as</p> <p>3 whether Urner Barry has a price, region-specific price,</p> <p>4 for eggs?</p> <p>5 A. Still, no, I do not remember anything about</p> <p>6 that.</p> <p>7 Q. So then it goes on to list different sizes of</p> <p>8 eggs that you could purchase; jumbo, extra large, large,</p> <p>9 et cetera. And then under the price column in this</p> <p>10 chart, it says -5, -7, -9. Do you know what that might</p> <p>11 refer to?</p> <p>12 A. The differential off the Urner Barry market.</p> <p>13 Q. And would that be in percents that you would do</p> <p>14 differential, or cents?</p> <p>15 A. I don't remember.</p> <p>16 Q. And all of these are negative; correct?</p> <p>17 A. Yes.</p> <p>18 Q. So all these represent a discount off of the</p> <p>19 Urner Barry price?</p> <p>20 A. Yes.</p> <p>21 Q. And at the bottom, underneath the chart, it</p> <p>22 says: "Prices increased 2 cents per dozen 2/24/03 for</p> <p>23 animal welfare issues."</p> <p>24 Does that refresh your recollection at all as</p> <p>25 to whether there was ever a price increase for animal</p>

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<p style="text-align: right;">186</p> <p>1 welfare?</p> <p>2 A. No. I've never seen this document before, so I</p> <p>3 honestly don't remember.</p> <p>4 (Bates Exhibit 21 was marked for</p> <p>5 identification.)</p> <p>6 Q. This is Exhibit 21, a highly confidential</p> <p>7 document marked PUB_EGGS_019635.</p> <p>8 It says at the bottom -- it appears to be a</p> <p>9 printout from a Web site. It says</p> <p>10 https://viewstar.publix.com. Have you ever heard of</p> <p>11 Viewstar?</p> <p>12 A. Never heard of it.</p> <p>13 Q. Do you have any idea where this printout would</p> <p>14 have come from?</p> <p>15 A. I've not seen it before, so --</p> <p>16 Q. And does this appear to be a price from</p> <p>17 Cal-Maine for different sized eggs in -- for one week in</p> <p>18 July 2005?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. It appears to be, yes.</p> <p>21 Q. And can you explain to me -- this document</p> <p>22 mentions unit cost and case cost. Can you explain to me</p> <p>23 at Publix what the difference between those two were?</p> <p>24 MR. GERMAINE: Objection to form.</p> <p>25 A. Case cost is just the addition -- it's -- it's</p>	<p style="text-align: right;">188</p> <p>1 stamped PUB_EGGS_015466.</p> <p>2 This appears to be an e-mail from Mike Lindsey</p> <p>3 at Tampa Farms to Joel Bryant, and the subject line is</p> <p>4 "Egg Prices".</p> <p>5 And Mike Lindsey, you testified, you know from</p> <p>6 Tampa Farms; correct?</p> <p>7 A. Correct.</p> <p>8 Q. In this e-mail -- I'll give you a second to</p> <p>9 look it over. Go ahead.</p> <p>10 A. Okay.</p> <p>11 Okay.</p> <p>12 Q. Do you know why Joel Bryant would have been</p> <p>13 communicating with Mike Lindsey of Tampa Farms about egg</p> <p>14 prices?</p> <p>15 A. MSP department sources eggs for the plants, as</p> <p>16 we discussed earlier. That is the only reason that it</p> <p>17 would be applicable that I'm aware of, if that was his</p> <p>18 position.</p> <p>19 Q. Does MSP also have involvement in your category</p> <p>20 reviews where you select suppliers?</p> <p>21 A. Yes.</p> <p>22 Q. Could he have been communicating with Mike</p> <p>23 Lindsey in regard to the retail category review?</p> <p>24 A. I do not know.</p> <p>25 Q. And here Mike Lindsey's communicating to Joel</p>
<p style="text-align: right;">187</p> <p>1 the total price of the case. Unit would be just the</p> <p>2 division of whatever the pack is, so...</p> <p>3 Q. So like a carton of eggs?</p> <p>4 A. Yeah. Publix large eggs at a pack of six --</p> <p>5 no, the size of six, pack of 30, so...</p> <p>6 Q. So 30 cartons at 29 cents a carton would be</p> <p>7 that case cost --</p> <p>8 A. Right.</p> <p>9 Q. -- is what this means? Okay.</p> <p>10 A. That's what it means.</p> <p>11 Q. And do you see at the bottom, it says: "These</p> <p>12 prices reflects a 2 cent per dozen increase to offset</p> <p>13 costs associated with animal care certification."</p> <p>14 A. I see it.</p> <p>15 Q. And this is in 2005.</p> <p>16 A. I see it.</p> <p>17 Q. Do you recall whether in 2005 there was a</p> <p>18 surcharge related to animal care certification?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you know who Joel Bryant is?</p> <p>21 A. He's a Publix associate. He worked for MSP at</p> <p>22 one time.</p> <p>23 (Bates Exhibit 22 was marked for</p> <p>24 identification.)</p> <p>25 Q. Exhibit 22, highly confidential document Bates</p>	<p style="text-align: right;">189</p> <p>1 Bryant several reasons that he believes egg prices have</p> <p>2 increased; right?</p> <p>3 A. Right.</p> <p>4 Q. Did you have any discussion with Joel Bryant</p> <p>5 about these conversations that he was having with Mike</p> <p>6 Lindsey?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Were you -- on the -- sorry. Bullet B here in</p> <p>9 the e-mail, it says: "Industry standards for hen space</p> <p>10 allocation under the UEP Humane Practices Certification</p> <p>11 program have increased incrementally over the past five</p> <p>12 years. This has resulted in a reduction of the number</p> <p>13 of birds in facilities for the fourth time since 2002.</p> <p>14 Fewer hens lead to fewer eggs and put downward pressure</p> <p>15 on supply."</p> <p>16 Does that statement reflect your understanding</p> <p>17 of the impact of the UEP certified program on hen</p> <p>18 supply?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. Not really, no.</p> <p>21 Q. And, under D, you'll see that Mike Lindsey</p> <p>22 lists increased demand for exports as a factor in</p> <p>23 affecting egg prices. Do you -- did you ever -- did</p> <p>24 Mike Lindsey ever communicate to you that increased</p> <p>25 demand for exports could affect egg prices?</p>

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<p style="text-align: right;">190</p> <p>1 A. I don't remember.</p> <p>2 Q. Did you ever discuss with Mike Lindsey various</p> <p>3 factors that could affect egg prices?</p> <p>4 A. I don't remember.</p> <p>5 Q. Would your buyer have discussed with Mike</p> <p>6 Lindsey factors affecting egg prices?</p> <p>7 A. Yes.</p> <p>8 Q. Is it likely that he would have communicated</p> <p>9 these same reasons to your buyer as to why egg prices</p> <p>10 were changing?</p> <p>11 MR. GERMAINE: Objection to form.</p> <p>12 MR. RAYLE: Join.</p> <p>13 A. I can't speak for -- for him.</p> <p>14 THE VIDEOGRAPHER: We are now off the record.</p> <p>15 The time is 1:32 p.m.</p> <p>16 (Recess from 1:32 until 1:36 p.m.)</p> <p>17 THE VIDEOGRAPHER: We are now on the record.</p> <p>18 The time is 1:36 p.m.</p> <p>19 (Bates Exhibit 23 was marked for</p> <p>20 identification.)</p> <p>21 BY MS. ADENDORFF:</p> <p>22 Q. This is marked as Exhibit 23. It's a highly</p> <p>23 confidential document Bates stamped PUB_EGGS_015153.</p> <p>24 And it appears to be a Publix internal memo</p> <p>25 from James Lucas, category manager dairy, in</p>	<p style="text-align: right;">192</p> <p>1 A. Yes.</p> <p>2 Q. So this memo, the subject line is "Rising Egg</p> <p>3 Prices," so from that, from your experience, you would</p> <p>4 assume that this memo would only be sent if rising egg</p> <p>5 prices was something that was actually causing customer</p> <p>6 concern or questions; right?</p> <p>7 MR. GERMAINE: Objection to form.</p> <p>8 A. That's my perception.</p> <p>9 Q. And in this memo, you can give it a look-over</p> <p>10 if you want, James Lucas is describing some factors that</p> <p>11 might be causing the cost of eggs to go up.</p> <p>12 A. Okay.</p> <p>13 Q. And in this memo, what are the reasons that he</p> <p>14 lists that egg prices are going up?</p> <p>15 A. Holiday demand, less laying hens, cost of corn</p> <p>16 and the feed, and breaker market.</p> <p>17 Q. And fuel and energy costs; right.</p> <p>18 A. Fuel and energy at the bottom, yes.</p> <p>19 Q. So the second bullet is change in flock size.</p> <p>20 Do you remember ever being notified from your egg</p> <p>21 suppliers about changes in flock size?</p> <p>22 A. I don't remember.</p> <p>23 Q. Is that something that your department would</p> <p>24 have monitored to foresee any impact on the price of</p> <p>25 eggs?</p>
<p style="text-align: right;">191</p> <p>1 October 2007 to all store and grocery managers; is that</p> <p>2 right?</p> <p>3 A. Right.</p> <p>4 Q. And the subject line is "Rising Egg Prices"?</p> <p>5 A. Right.</p> <p>6 Q. Does this indicate that you were no longer</p> <p>7 category manager of dairy in October of 2007?</p> <p>8 A. Yes, it does.</p> <p>9 Q. And was James Lucas your successor?</p> <p>10 A. Yes, he was.</p> <p>11 Q. And was it typical or normal practice for a</p> <p>12 category manager to send a memo to all store and grocery</p> <p>13 managers?</p> <p>14 A. Yes.</p> <p>15 Q. How often did you do that?</p> <p>16 A. Not often.</p> <p>17 Q. And why would you have sent such a memo?</p> <p>18 A. If we were getting questions or -- to give an</p> <p>19 example, like the rising cost of milk. It's in the</p> <p>20 news, customers are aware of it, and so they have</p> <p>21 questions when they come in the store. So that would be</p> <p>22 a situation where we would provide some explanation to</p> <p>23 the stores so they can answer customers' questions.</p> <p>24 Q. And would the rising price have to be pretty</p> <p>25 noticeable to send out a memo about it?</p>	<p style="text-align: right;">193</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you remember if during the time that you</p> <p>4 were category manager changes in flock size affected the</p> <p>5 prize of eggs, to your knowledge?</p> <p>6 A. No, I do not remember.</p> <p>7 Q. Have you ever heard of PETA?</p> <p>8 A. I have.</p> <p>9 Q. What do you understand PETA to be?</p> <p>10 A. Organization for animal rights.</p> <p>11 Q. Have you ever heard of Humane Society or HSUS?</p> <p>12 A. Yes.</p> <p>13 Q. And what do you understand those -- that</p> <p>14 organization to be?</p> <p>15 A. Same type of thing. For animal rights, animal</p> <p>16 welfare. Maybe that's not the right term, but the</p> <p>17 treatment of animals.</p> <p>18 Q. Do you recall in the early 2000s being aware</p> <p>19 that PETA was putting pressure on fast food restaurants</p> <p>20 or grocery stores related to animal welfare?</p> <p>21 A. I remember PETA. I don't remember what -- what</p> <p>22 it was that happened with them.</p> <p>23 Q. Do you remember PETA in connection to Publix?</p> <p>24 A. In connection with some complaint. That's</p> <p>25 really all I remember, and I don't remember the</p>

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<p style="text-align: right;">194</p> <p>1 complaint, what it was.</p> <p>2 Q. Would that time frame be the early 2000s?</p> <p>3 A. Yes.</p> <p>4 Q. So you have some recollection that PETA or</p> <p>5 someone associated with PETA was making a complaint in</p> <p>6 the early 2000s to Publix?</p> <p>7 A. To be clear, sometime during my time as</p> <p>8 category manager. I don't remember when, whether it was</p> <p>9 early or late 2000s, so...</p> <p>10 Q. And you testified earlier that FMI adopted</p> <p>11 animal welfare guidelines, and you testified that animal</p> <p>12 welfare guidelines were needed because of pressure from</p> <p>13 activists; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And PETA is one such animal welfare activist;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 (Bates Exhibit 24 was marked for</p> <p>19 identification.)</p> <p>20 Q. Have you ever heard of Progressive Grocer</p> <p>21 Magazine?</p> <p>22 A. I have.</p> <p>23 Q. What do you understand Progressive Grocer to</p> <p>24 be?</p> <p>25 A. Just an industry magazine.</p>	<p style="text-align: right;">196</p> <p>1 expectation is that with the FMI and NCCR standards, we</p> <p>2 are going to see the most egregious of these ended."</p> <p>3 Do you recall whether PETA was pushing retail</p> <p>4 grocers to adopt the FMI and NCCR standards?</p> <p>5 A. I don't recall.</p> <p>6 Q. Looking at the next paragraph in the second</p> <p>7 column -- sorry. It's the one after that, starting with</p> <p>8 "After declaring victory."</p> <p>9 It says: "After declaring victory over</p> <p>10 McDonald's, Burger King, and Wendy's, PETA turned its</p> <p>11 attention to the records of other companies, including</p> <p>12 10 of the nation's largest grocery retailers. On its</p> <p>13 vegetarian campaign Web site GoVeg.com, PETA urges</p> <p>14 consumers not to shop at Albertson's, Costco, Kroger,</p> <p>15 Meijer, Publix, Safeway, Supervalu, Wal-Mart, Sam's</p> <p>16 Club, and Winn Dixie until they agree to meet or exceed</p> <p>17 the standards in the group settlement with McDonald's."</p> <p>18 Does that refresh your recollection of whether</p> <p>19 PETA was urging Publix to adopt animal welfare</p> <p>20 guidelines?</p> <p>21 A. I do not remember if PETA was asking for that</p> <p>22 specific animal welfare guideline. I just remember the</p> <p>23 complaints came from PETA about animal treatment.</p> <p>24 Q. And did you know at the time that PETA was</p> <p>25 putting pressure on other retail grocery chains?</p>
<p style="text-align: right;">195</p> <p>1 Q. Did you subscribe to Progressive Grocer?</p> <p>2 A. Yes, I receive it.</p> <p>3 Q. Do you recognize this document?</p> <p>4 A. No.</p> <p>5 Q. At the top, it says Progressive Grocer, and it</p> <p>6 appears to be the issue from January 1st, 2002. And</p> <p>7 then if you open to the next page, there's an article</p> <p>8 saying: "Animal rights - and wrongs. A PETA onslaught</p> <p>9 humbled the likes of Burger King and McDonald's. Now on</p> <p>10 the activists' hit list: Kroger, Safeway, Walmart, and</p> <p>11 more."</p> <p>12 Do you recall PETA attacking Burger King or</p> <p>13 McDonald's around 2001/2002?</p> <p>14 A. I don't remember it. This is obviously a</p> <p>15 magazine article about what they were doing.</p> <p>16 Q. In looking at the bottom of the first column</p> <p>17 there, it says -- there's a quote from someone named</p> <p>18 Bruce Friedrich, vegan campaign coordinator for PETA,</p> <p>19 and it says: "With the exception of Whole Foods,</p> <p>20 none" -- he's talking about supermarkets. Sorry. To</p> <p>21 back up a second, he's referring to supermarkets.</p> <p>22 "With the exception of Whole Foods, none have</p> <p>23 any kind of animal welfare standards in place at all, so</p> <p>24 the most gratuitous of the animal abuses are routine</p> <p>25 with grocery chains, and it needs to stop. Our hope and</p>	<p style="text-align: right;">197</p> <p>1 A. Yeah. Yes.</p> <p>2 Q. What do you recall about that?</p> <p>3 A. Because just from the fact that there's an</p> <p>4 organization, they were kind of -- would include -- it</p> <p>5 wasn't targeted specifically to Publix.</p> <p>6 Q. That there were several other stores?</p> <p>7 A. Yeah, that was my recollection.</p> <p>8 Q. And this list of grocery stores here, these are</p> <p>9 Publix competitors; right, for the ones that operate in</p> <p>10 this region? Major retail grocers?</p> <p>11 MR. GERMAINE: Objection to form.</p> <p>12 A. Meijer is not, no. The answer to the question,</p> <p>13 no.</p> <p>14 Q. Are any of -- do any of these operate in the</p> <p>15 same regions as Publix?</p> <p>16 A. Yes.</p> <p>17 Q. Which ones?</p> <p>18 A. Albertson's, Costco, Kroger, Wal-Mart, Sam's</p> <p>19 Club, Winn Dixie.</p> <p>20 Q. And are those competitors of Publix?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if any of those organizations are</p> <p>23 members of FMI?</p> <p>24 A. I do not know.</p> <p>25 (Bates Exhibit 25 was marked for</p>

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<p style="text-align: right;">198</p> <p>1 identification.)</p> <p>2 Q. In front of you is Exhibit 25, and it's a</p> <p>3 highly confidential document Bates stamped</p> <p>4 PUB_EGGS_011763.</p> <p>5 If you look at the top, it actually says "Greg</p> <p>6 Bates".</p> <p>7 A. It does.</p> <p>8 Q. Which implies that it was actually printed from</p> <p>9 your file; right?</p> <p>10 A. Right.</p> <p>11 Q. And it says: "From: Mike Bynum."</p> <p>12 And, again, that's Mike Bynum of Tampa Farms;</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 Q. It's to you, Dave Cerra, and Bessie Foster.</p> <p>16 And that would be your boss and the buyer beneath you;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. This is June 2002. The subject is "Animal</p> <p>20 Welfare: Update." He says: Hi. Following up on the</p> <p>21 animal welfare issue, I'm advised that Kroger's CEO</p> <p>22 received a letter like the one received by Charlie</p> <p>23 Jenkins Jr., as well as A & P. Safeway received their</p> <p>24 letter earlier. Kroger has indicated it will follow</p> <p>25 FMI's guidelines on humane treatment (when they are</p>	<p style="text-align: right;">200</p> <p>1 A. I see that.</p> <p>2 Q. Do you recall any discussions around this</p> <p>3 e-mail?</p> <p>4 A. No, I don't. I just don't remember.</p> <p>5 Q. Did you ever ask Tampa Farms to update you on</p> <p>6 animal welfare issues?</p> <p>7 A. I do not remember.</p> <p>8 Q. Why was Mike Bynum providing you this e-mail --</p> <p>9 sending you this e-mail?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 A. I don't remember.</p> <p>12 Q. It says "update". Did you ever request any</p> <p>13 updates from him?</p> <p>14 A. Don't remember.</p> <p>15 Q. Do you know whether the letter he's referring</p> <p>16 to could have been a letter from an animal activist</p> <p>17 organization?</p> <p>18 A. I just don't remember. You can make that</p> <p>19 assumption, but I can only answer by what I know, so</p> <p>20 I don't -- I don't remember.</p> <p>21 Q. Do you recall any letter that Publix received</p> <p>22 from an animal activist organization?</p> <p>23 A. I just don't remember.</p> <p>24 Q. But it appears that you would have known about</p> <p>25 that at the time; correct?</p>
<p style="text-align: right;">199</p> <p>1 released). I'll update you if I hear anything further."</p> <p>2 So in this letter Mike was updating you about</p> <p>3 the animal welfare policies of other competitors;</p> <p>4 correct?</p> <p>5 MR. GERMAINE: Objection to form.</p> <p>6 MR. RAYLE: Join.</p> <p>7 A. He spoke about Kroger.</p> <p>8 Q. Kroger specifically; right?</p> <p>9 A. Right.</p> <p>10 Q. And you just testified that Kroger is a</p> <p>11 competitor of Publix; right?</p> <p>12 A. Yes.</p> <p>13 Q. And he's referring to a letter that Charlie</p> <p>14 Jenkins Jr. received. Who is Charlie Jenkins Jr.?</p> <p>15 A. At the time, he was CEO of Publix.</p> <p>16 Q. And he's talking about a certain letter that</p> <p>17 the CEO received. Do you know what letter that would</p> <p>18 be?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you recall any discussions about a letter</p> <p>21 regarding animal welfare that Charlie Jenkins Jr.</p> <p>22 received?</p> <p>23 A. I don't remember.</p> <p>24 Q. And do you see he says that the Kroger CEO</p> <p>25 received a similar letter?</p>	<p style="text-align: right;">201</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 A. If the letter was directed to me, I would have</p> <p>3 known about it.</p> <p>4 Q. Does it appear that your group was concerned</p> <p>5 with whatever this letter was?</p> <p>6 MR. GERMAINE: Objection.</p> <p>7 A. Yeah, it appears that way.</p> <p>8 Q. Do you know of any stockholder proposal that</p> <p>9 Publix faced from someone associated with PETA?</p> <p>10 A. Stockholder proposal? I don't remember.</p> <p>11 (Bates Exhibit 26 was marked for</p> <p>12 identification.)</p> <p>13 Q. This is Exhibit 26, highly confidential</p> <p>14 document PUB_EGGS_021031.</p> <p>15 This appears to be a draft revision of Publix's</p> <p>16 animal welfare statement July 18th, 2008. Are you aware</p> <p>17 that in and around July 2008, Publix revised its animal</p> <p>18 welfare statement?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you recall receiving any update on any</p> <p>21 change to Publix's animal welfare policy around 2008?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you know who at Publix would have been in</p> <p>24 charge of making any revision to its animal welfare</p> <p>25 policy?</p>

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<p style="text-align: right;">202</p> <p>1 A. Should have been the CQA department, would be 2 my recollection. 3 Q. And on the bottom of this page, it says: "The 4 following is what currently exists on the Publix.com 5 website", right under the word "Reference". 6 Were you aware that the Publix -- Publix has a 7 public Web site? 8 A. Yes. 9 Q. And do you know if that Web site refers to -- 10 refers or discusses in any way animal welfare? 11 A. I don't know. 12 Q. Would you have any involvement with drafting 13 what would be on the Web site related to animal welfare? 14 A. No. 15 Q. Who at Publix would be involved with that? 16 A. CQA. 17 Q. Are you aware today that you're testifying in 18 connection with lawsuits Publix has filed against egg 19 producers? 20 A. Yes. 21 Q. And what do you understand the nature of the 22 allegations at issue in this lawsuit to be? 23 A. Price fixing by the egg producers. 24 Q. And do you have any knowledge of what 25 activities your employer is alleging those egg producers</p>	<p style="text-align: right;">204</p> <p>1 Q. You testified that Cal-Maine is still a 2 supplier to Publix; correct? 3 A. Yes. 4 Q. And you know that Cal-Maine is a defendant in 5 this lawsuit? 6 A. Yes. 7 Q. So you know that Publix is suing Cal-Maine? 8 A. Yes. 9 Q. And you know that they're suing Cal-Maine 10 relating to what you say is price fixing; correct? 11 A. Yes. 12 Q. But Publix is continuing to buy Cal-Maine's 13 eggs; correct? 14 A. Yes. 15 Q. So you've never been in a meeting where anyone 16 has discussed dropping Cal-Maine as a supplier because 17 you were suing them with respect to eggs? 18 A. No. 19 Q. And you're in charge of the department that 20 purchases egg from Cal-Maine; correct? 21 A. I am now, yes. 22 Q. As of January, you are; correct? 23 A. As of January. 24 Q. January? 25 A. January.</p>
<p style="text-align: right;">203</p> <p>1 took? 2 A. No. 3 Q. Do you know if the UEP certified program is at 4 issue in this litigation? 5 A. No. 6 Q. Do you know that your employer is contending 7 that the UEP certified program violates the antitrust 8 laws? 9 MR. GERMAINE: Objection to form. 10 A. No. 11 Q. Has anyone ever told you that the UEP certified 12 program was being challenged in this litigation? 13 MR. GERMAINE: Objection to the extent it calls 14 for privileged information. If you can answer that 15 without revealing the substance of conversations 16 with counsel, you can answer. 17 A. I don't remember. 18 Q. Has anyone ever -- have you ever discussed with 19 anyone at Publix or has anyone at Publix ever discussed 20 with you whether this lawsuit should change Publix's egg 21 buying practices? 22 A. No. 23 Q. Do you know whether Publix's egg buying 24 practices have changed as a result of this lawsuit? 25 A. No.</p>	<p style="text-align: right;">205</p> <p>1 Q. January. And you've never heard anyone say 2 that, "We should drop Cal-Maine as a supplier"? 3 MR. GERMAINE: Objection. 4 A. No. 5 Q. What about Michael's? 6 A. No. 7 Q. Has anyone ever suggested to you that any 8 supplier should be dropped because they're defendants in 9 this lawsuit? 10 A. No. 11 Q. Do you know of any other situation in which 12 you've purchased products from a company that your 13 employer was simultaneously suing for allegations that 14 their products were illegally made or manufactured? 15 MR. GERMAINE: Objection to form. 16 A. No. 17 Q. Do you know of any situation in which you've 18 paid a price for a product that you believed was 19 illegally inflated or price fixed? 20 MR. GERMAINE: Objection to form. I direct you 21 not to answer that question to the extent it will 22 reveal the substance of communications with counsel. 23 If you can answer it some other way, you may answer 24 it. 25 A. I can't answer it.</p>

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<p style="text-align: right;">206</p> <p>1 Q. Has any business person ever told you, "Don't 2 buy eggs that have artificially inflated prices"?</p> <p>3 MR. GERMAINE: Objection to form.</p> <p>4 A. No.</p> <p>5 Q. That has never come up in a business meeting?</p> <p>6 MR. GERMAINE: Objection.</p> <p>7 A. No.</p> <p>8 Q. Do you know if Publix has continued to support 9 the UEP animal care program?</p> <p>10 A. No, I do not know.</p> <p>11 Q. Do you know whether Publix has continued to 12 support FMI's animal welfare guidelines?</p> <p>13 A. I don't know.</p> <p>14 Q. But you know that Cal-Maine is UEP certified; 15 right?</p> <p>16 A. In the time period we were talking about.</p> <p>17 Q. Do you know if they're certified today?</p> <p>18 A. No, I don't.</p> <p>19 Q. Do you know if Publix is still carrying any 20 products that are UEP certified?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know if Publix has made any effort to 23 make sure that they're no longer carrying products that 24 are animal care certified?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">208</p> <p>1 said are they -- that's what you're saying, are they 2 important to Publix today. I don't know.</p> <p>3 Q. But you testified earlier --</p> <p>4 A. Because I don't know if that's changed. I 5 wasn't managing the business.</p> <p>6 Q. You don't know that it has changed, though; 7 right?</p> <p>8 A. I don't know if it's changed. I don't know if 9 it is, if it isn't. I don't know.</p> <p>10 Q. And in frozen foods, did you have any 11 involvement with foods that were governed by the FMI 12 guidelines?</p> <p>13 A. I do not recall any.</p> <p>14 Q. And you know that FMI adopted animal welfare 15 guidelines, we've established that, and you testified 16 earlier that Publix trusts FMI; right?</p> <p>17 A. Right.</p> <p>18 Q. That FMI adopted those guidelines because it 19 believed they had animal -- positive animal welfare 20 benefits; right?</p> <p>21 A. Right.</p> <p>22 Q. And if I represented to you that FMI has not 23 stopped endorsing the UEP certified program, would you 24 assume that that means FMI believes that the animal 25 welfare -- sorry -- the UEP certified program continues</p>
<p style="text-align: right;">207</p> <p>1 Q. Is animal welfare still important -- still 2 important to Publix today?</p> <p>3 A. Yes.</p> <p>4 Q. And so to the extent that increasing cage space 5 improves animal welfare, which we discussed earlier 6 today; right --</p> <p>7 MR. GERMAINE: Objection.</p> <p>8 A. You're trying to make a link there. Animal 9 welfare. Like I said earlier, the intent is for 10 suppliers to have the best practices. So I would say 11 animal welfare, has been described today, means space in 12 cage. Maybe it doesn't. So animal welfare is important 13 to Publix in the fact that it's to do the right thing 14 for animals. Defining that could be different. I 15 don't --</p> <p>16 Q. And FMI adopted animal welfare guidelines; 17 right? And we saw earlier that those include the UEP 18 certified program?</p> <p>19 A. We did.</p> <p>20 Q. And you testified earlier that Publix trusts --</p> <p>21 A. So my answer would be, is animal welfare in 22 that context, I don't know. Does that --</p> <p>23 Q. So I'm confused by your answer. Say what you 24 mean again.</p> <p>25 A. Okay. The FMI animal welfare procedures, you</p>	<p style="text-align: right;">209</p> <p>1 to have positive effects on animal welfare?</p> <p>2 MR. GERMAINE: Objection to form.</p> <p>3 MR. RAYLE: Join.</p> <p>4 A. I would assume.</p> <p>5 Q. And Publix trusts FMI and its judgment on that 6 matter, right?</p> <p>7 MR. GERMAINE: Objection to form.</p> <p>8 A. I don't know. Publix trusts FMI in general, is 9 what I said.</p> <p>10 Q. And Publix has trusted FMI specifically to 11 formulate animal welfare guidelines that it adopted; 12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And, to your knowledge, Publix has made no 15 effort to create its own animal welfare program separate 16 from the FMI animal welfare program?</p> <p>17 A. That is correct.</p> <p>18 Q. Would Publix prefer to revert to standards with 19 smaller cages for egg-laying hens today --</p> <p>20 MR. GERMAINE: Objection.</p> <p>21 Q. -- as a result of this lawsuit?</p> <p>22 MR. GERMAINE: Objection to the form.</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know if Publix has considered adopting 25 any other animal welfare guidelines other than the FMI</p>

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<p style="text-align: right;">210</p> <p>1 program?</p> <p>2 A. I do not know.</p> <p>3 Q. Why is Publix still buying certified eggs if it</p> <p>4 believes they're illegal?</p> <p>5 MR. GERMAINE: Objection to form. Lacks</p> <p>6 foundation. Misstates prior testimony. The witness</p> <p>7 hasn't said any such thing.</p> <p>8 Q. Why is Publix still buying eggs from Cal-Maine</p> <p>9 if it believes that Cal-Maine is illegally fixing</p> <p>10 prices?</p> <p>11 MR. GERMAINE: Objection to the extent it calls</p> <p>12 for privileged testimony. I direct you not to</p> <p>13 answer if it reveals the substance of communication</p> <p>14 with counsel. If you can answer it some other way,</p> <p>15 go ahead.</p> <p>16 A. I can't answer that.</p> <p>17 Q. Why can't you?</p> <p>18 A. What was the question again?</p> <p>19 Q. Why is Publix still buying eggs from Cal-Maine</p> <p>20 if it believes that Cal-Maine is illegally fixing egg</p> <p>21 prices?</p> <p>22 MR. GERMAINE: The same instruction.</p> <p>23 A. I don't know.</p> <p>24 Q. Have you had any discussions with your egg</p> <p>25 buyers or your egg/dairy category manager about this</p>	<p style="text-align: right;">212</p> <p>1 Publix, it's because Publix believes that Cal-Maine is</p> <p>2 meeting those needs; right?</p> <p>3 MR. GERMAINE: Objection to form.</p> <p>4 A. They are supplying products that meet the</p> <p>5 specification.</p> <p>6 Q. Have you ever heard the term Capper-Volstead?</p> <p>7 A. Never heard that term.</p> <p>8 Q. Has anyone ever represented to you that UEP is</p> <p>9 a Capper-Volstead Co-operative?</p> <p>10 A. No.</p> <p>11 Q. Has anyone ever told you that UEP or the</p> <p>12 members of UEP are immune from the antitrust laws in any</p> <p>13 way?</p> <p>14 MR. GERMAINE: Objection to form.</p> <p>15 A. No.</p> <p>16 MS. ADENDORFF: I think that's all the</p> <p>17 questions I have.</p> <p>18 MR. GERMAINE: Okay.</p> <p>19 MR. RAYLE: Nothing from the indirect</p> <p>20 purchasers.</p> <p>21 MR. GERMAINE: Anything on the phone?</p> <p>22 MS. CRABTREE: None from me.</p> <p>23 MR. GERMAINE: I don't have any questions</p> <p>24 today. We reserve signature and designate the</p> <p>25 transcript as highly confidential.</p>
<p style="text-align: right;">211</p> <p>1 lawsuit?</p> <p>2 A. Egg buyer, no. Egg category manager, briefly.</p> <p>3 He knows it was going on because Jimmy Wilson worked for</p> <p>4 him and he was --</p> <p>5 Q. And who's Jimmy Wilson?</p> <p>6 A. He used to be the egg buyer.</p> <p>7 Q. And what did he tell you he knew about this</p> <p>8 lawsuit?</p> <p>9 A. That it's basically the fact that suppliers</p> <p>10 were price fixing. That's --</p> <p>11 Q. Has he reported to you any conversations he had</p> <p>12 with his egg buyers about this lawsuit?</p> <p>13 A. No.</p> <p>14 Q. Why not switch to another producer while this</p> <p>15 lawsuit is pending?</p> <p>16 MR. GERMAINE: Objection to form.</p> <p>17 A. Our job is to procure products for Publix and</p> <p>18 serve our customers, so to be real honest, we don't -- I</p> <p>19 don't know a lot of the information about the lawsuit,</p> <p>20 which I've said. You've asked me questions.</p> <p>21 Q. And so you testified earlier that Publix tries</p> <p>22 to procure products that are quality products at a low</p> <p>23 price; right?</p> <p>24 A. Correct.</p> <p>25 Q. And so if -- if Cal-Maine is still supplying</p>	<p style="text-align: right;">213</p> <p>1 THE VIDEOGRAPHER: This concludes the</p> <p>2 deposition. We are now off the record. The time is</p> <p>3 2:04 p.m.</p> <p>4 * * * * *</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<div style="text-align: right; margin-bottom: 10px;">214</div> <div style="text-align: center; margin-bottom: 10px;">ACKNOWLEDGMENT OF DEPONENT</div> <div style="margin-bottom: 10px;">I, _____, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata Sheet signed by me.</div> <div style="display: flex; justify-content: space-between;"><div>_____ (DATE)</div><div>_____ (SIGNATURE)</div></div>	<div style="text-align: right; margin-bottom: 10px;">216</div> <div style="text-align: center; margin-bottom: 10px;">CERTIFICATE OF REPORTER</div> <div style="margin-bottom: 10px;">STATE OF FLORIDA COUNTY OF POLK</div> <div style="margin-bottom: 10px;">I, Joan L. Pitt, Registered Merit Reporter, Certified Realtime Reporter and Florida Professional Reporter, do hereby certify that I was authorized to and did stenographically report the examination of the witness named herein; that a review of the transcript was requested; and that the foregoing transcript is a true record of my stenographic notes.</div> <div style="margin-bottom: 10px;">I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel for any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of this action.</div> <div style="margin-bottom: 10px;">DATED THIS 04/28/2014 at Lakeland, Polk County, Florida.</div> <div style="text-align: center;">_____ JOAN L. PITT, RMR, CRR, FPR</div>
<div style="text-align: right; margin-bottom: 10px;">215</div> <div style="text-align: center; margin-bottom: 10px;">CERTIFICATE OF REPORTER OATH</div> <div style="margin-bottom: 10px;">STATE OF FLORIDA COUNTY OF POLK</div> <div style="margin-bottom: 10px;">I, Joan L. Pitt, Registered Merit Reporter, Certified Realtime Reporter, Florida Professional Reporter and Notary Public in and for the State of Florida at large, hereby certify that the witness named herein appeared before me on 04/16/2014, and was duly sworn.</div> <div style="margin-bottom: 10px;">WITNESS my hand and official seal this 04/28/2014.</div> <div style="margin-bottom: 10px;">_____ JOAN L. PITT, RMR, CRR, FPR NOTARY PUBLIC - STATE OF FLORIDA MY COMMISSION NO. EE 202887 EXPIRES: 7-20-16</div>	

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